

In the Matter of:)
)
Application for Certification) Docket No.
of the Malburg Generating) 01-AFC-25
Station by the City of Vernon)
)

MONDAY, FEBRUARY 10, 2003

1:50 p.m.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

James D. Boyd, Presiding Member

Robert Pernell, Associate Member

HEARING OFFICER, ADVISORS PRESENT

Susan Gefter, Hearing Officer

A. V. "Al" Garcia, Advisor to Commissioner Pernell

STAFF AND CONSULTANTS PRESENT

William W. Westerfield, III, Staff Counsel

Kerry Willis, Staff Counsel

William Pfanner, Siting Project Manager

Joseph M. Loyer

Dale Edwards

Michael Ringer

PUBLIC ADVISER

Roberta Mendonca

APPLICANT

Eric T. Fresch, Legal Counsel

Ramon Z. Abueg, Assistant Director of Engineering
and Operations
City of Vernon

Krishna Nand, Associate
Parsons Engineering Science

ALSO PRESENT

Mozen Nazemi, Assistant Deputy Executive Officer

John Yee

Chandrashekhar S. Bhatt, Air Quality Engineer
South Coast Air Quality Management District

I N D E X

	Page
Proceedings	1
Opening Remarks	1
Introductions	1
Background and Overview	5
Presiding Member Boyd	5
Hearing Officer Willis	6
Public Adviser Mendonca	22
Topics	10
Project Description	10
Applicant witness R. Abueg	11
Direct Examination by Mr. Fresch	11
Exhibit 1 and 38	20
Socioeconomics - Environmental Justice	25
Applicant declaration	25
Exhibits 1, 2, 3, 25, 32 and 38	25
CEC Staff witness W. Pfanner	26
Air Quality	28
Applicant witness K. Nand	29
Direct Examination by Mr. Fresch	29
Cross-Examination by Mr. Westerfield	34
Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 16, 18, 26, 30, 33, 38	35
South Coast Air Quality Management District representative M. Nazemi	36
Questions	40
Exhibits	42
CEC Staff witness J. Loyer	51
Questions by Committee	52
Exhibit 34, 35, 36, 37, 39, FDOC	80/81

I N D E X

	Page
Topics - continued	
Public Health	81
Applicant	81
Exhibits 1, 3, 4, 8, 28	81/82
Exhibit 7	84
CEC Staff witness W. Pfanner	82
Exhibits 34, 35, 36, 37	85/85
Alternatives	85
Applicant by declaration	85
Exhibits 1, 38	85/86
CEC Staff	86
Facility Design	86
Applicant by declaration	86
Exhibits 1, 38	86/86
CEC Staff by declaration	87
Exhibits 34, 35, 36, 37	87/87
Power Plant Reliability	87
Applicant by declaration	87
Exhibits 1, 38	87/87
CEC Staff by declaration	87
Exhibits 34, 35, 36, 37	87/87
Power Plant Efficiency	88
Applicant by declaration	88
Exhibits 1, 38	88/88
CEC Staff by declaration	88
Exhibits 34, 35, 36, 37	88/88
Transmission System Engineering	88
Applicant by declaration	88
Exhibits 1, 2, 3, 4, 20, 27, 31	88/89

I N D E X

	Page
Topics - continued	
Transmission System Engineering - continued	
CEC Staff by declaration	89
Exhibits 34, 35, 36, 37	89
Transmission Line Safety and Nuisance	89
Applicant by declaration	89
Exhibit 38	89
CEC Staff by declaration	90
Exhibits 34, 35, 36, 37	90
Cultural Resources	90
Applicant witness R. Abueg	90
Questions by Committee	90
Testimony by declaration	95
Exhibits 38, 1, 2, 3, 4, 29	95/95
CEC Staff by declaration	95
Exhibits 34, 35, 36	96/96
Geological/Paleontological Resources	96
Applicant by declaration	96
Exhibits 38, 1, 2, 3	96/96
CEC Staff by declaration	96
Exhibits 34, 35, 36	97/97
Hazardous Materials	97
Applicant by declaration	97
Exhibits 38, 1	97/97
CEC Staff by declaration	97
Exhibits 34, 35, 36	97/97
Waste Management	97
Applicant by declaration	98
Exhibits 38, 1	98/98

I N D E X

	Page
Topics - continued	
Waste Management - continued	
CEC Staff by declaration	98
Exhibits 34, 35, 36	98/98
Traffic and Transportation	98
Applicant by declaration	98
Exhibits 38, 1, 2, 3, 10	98/99
Exhibit 4	99/99
CEC Staff by declaration	99
Exhibits 34, 35, 36	99/99
Visual Resources	99
Applicant by declaration	100
Exhibits 38, 1, 2, 3, 4	100/100
CEC Staff by declaration	100
Exhibits 34, 35, 36	100/100
Land Use	100
Applicant by declaration	100
Exhibits 38, 1, 2	100/101
CEC Staff by declaration	101
Exhibits	
Biological Resources	101
Applicant by declaration	101
Exhibits 38, 1	101/101
CEC Staff by declaration	101
Exhibits 34, 35, 36	101/101
Soil and Water Resources	102
Applicant by declaration	102
Exhibits 38, 1, 2, 3, 4, 19, 19A, 19B	102/102

I N D E X

	Page
Topics - continued	
Soil and Water Resources - continued	
CEC Staff witness W. Pfanner	102
Questions by Committee	102
Testimony by declaration	103
Exhibits 34, 35, 36	103/103
Worker Safety and Fire Protection	103
Applicant by declaration	104
Exhibits 38, 1	104/104
CEC Staff by declaration	104
Exhibits 34, 35, 36	104/104
Noise	104
Applicant by declaration	104
Exhibits 38, 1	104/104
CEC Staff by declaration	105
Exhibits 34, 35, 36	105/105
Question by Committee	105
Compliance and Closure	106
Applicant by declaration	106
Exhibits 38, 1, 15	106/107
CEC Staff by declaration	107
Exhibits 34, 35, 36	107/107
Exhibit 40	107/110
Skilled Labor Contract Questions	108
Exhibit 41	110
Record Closure Requests	110
Briefing Schedule	112

I N D E X

	Page
Schedule	112
Closing Remarks	113
Adjournment	113
Reporter's Certificate	114

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

P R O C E E D I N G S

1:50 p.m.

PRESIDING MEMBER BOYD: Good afternoon and welcome to the California Energy Commission's Malburg Generating Station Siting Committee hearing. This is the Committee's formal evidentiary hearing of the City of Vernon's application for certification of the Malburg Generating Station.

This hearing is being conducted, as you probably have picked up, as a telephone conference as well, for those who could not travel to Vernon today. And as we go through introductions we'll identify those individuals who are participating via the telephone.

The Energy Commission has assigned a Committee of two Commissioners to conduct proceedings on this AFC as we do with each and every siting case. I'm Commissioner Jim Boyd; I'm the Presiding Commissioner for this siting case. I'm joined by Commissioner Robert Pernell, on the left here, and Al Garcia, his Advisor.

To my immediate left is Kerry Willis, who is going to be the Acting Hearing Officer for the Committee. And to my right is Susan Gefter,

1 who is the Hearing Officer. Now, if you're
2 confused by way of an acting and a main, we've had
3 several siting cases colliding all at the same
4 time, and a workload issue, so Kerry's been
5 drafted to become the principal Hearing Officer
6 for concluding this particular case, with advice
7 and counsel, so to speak, from Susan.

8 Let me see what else I want to do here.
9 I think what we want to do now is ask the various
10 parties to introduce themselves on the record, and
11 I'd like to call upon the applicant to have
12 everyone who's going to be testifying for the
13 applicant state their names for the record and
14 introduce themselves to the audience.

15 MR. FRESCH: Thank you, Commissioner
16 Boyd. My name is Eric Fresch and I'm the Legal
17 Counsel for the applicant. And it's the
18 applicant's intent today to call Ramon Abueg of
19 the City Utilities Department. He's the Project
20 Manager and Director of Engineering and
21 Operations, to testify.

22 In addition to Ramon, the applicant
23 would like to call Dr. Krishna Nand of Parsons
24 Engineering Science. And he will also testify
25 today.

1 PRESIDING MEMBER BOYD: Thank you. Now
2 if the staff would introduce themselves, the CEC
3 Staff.

4 MR. WESTERFIELD: Thank you,
5 Commissioner Boyd. I'm William Westerfield
6 representing the CEC Staff. And with me here
7 today is Bill Pfanner, the Project Manager.

8 PRESIDING MEMBER BOYD: Let's go to the
9 telephone to identify CEC Staff who are on the
10 phone, if you would, please.

11 MR. RINGER: This is Mike Ringer from
12 the Energy Commission. About 80 percent of the
13 voice is being cut out and we're hearing hardly
14 anything.

15 PRESIDING MEMBER BOYD: Okay, we heard
16 that.

17 (Laughter.)

18 PRESIDING MEMBER BOYD: The silence you
19 hear is everybody looking aghast and trying to
20 figure out what do we do next.

21 MR. LOYER: This is Joe Loyer from the
22 California Energy Commission for air quality. If
23 I may suggest, if we could have people direct
24 their voices towards whatever this box is that's
25 on the table here. Of if we can have people

1 simply crowd more around it, if that's at all
2 possible.

3 PRESIDING MEMBER BOYD: Well, I'm about
4 a yard away from the box, as you call it. And if
5 you're not hearing me, and I'm kind of loud
6 anyway, then we have a dilemma.

7 MR. LOYER: You're coming in good right
8 now.

9 PRESIDING MEMBER BOYD: Okay. Well,
10 let's finish with who else might be on the phone
11 from the CEC.

12 MR. EDWARDS: Dale Edwards representing
13 environmental justice, socioeconomics.

14 PRESIDING MEMBER BOYD: Okay, thank you.

15 Now, are there any folks -- well,
16 there's only one official intervenor. Is there
17 anyone here from the California Unions for
18 Reliable Energy who is going to participate today?

19 All right. Now, if we could have the
20 various agencies introduce themselves. For
21 instance, the South Coast and any other City
22 representatives, come to the mike and identify
23 themselves, please.

24 MR. NAZEMI: My name is Mozen Nazemi;
25 I'm representing South Coast Air Quality

1 Management District. And with me are two
2 additional staff members, John Yee and Chandra
3 Bhatt.

4 PRESIDING MEMBER BOYD: Thank you. Now,
5 I don't see, nor have I heard our Public Adviser.
6 So we have a little hole in our agenda here today
7 unless she shows up either in person or on the
8 phone. The last we heard she was on her way, so
9 I'm not sure what could have happened. It's not
10 foggy in Sacramento, it's beautiful. In any event
11 we'll have to work around that situation.

12 Now, any members of the public who
13 intend to testify today. We have Communities for
14 a Better Environment, who have been noted as
15 somebody who may testify. Anyone else out there
16 in the audience intending to testify? All right,
17 we've got that completed.

18 The AFC review process is a public
19 proceeding, as you've gathered. Members of the
20 public and interested community organizations are
21 invited to participate and express their views on
22 matters related to this proposed project.

23 At this time normally I'd call upon the
24 Public Adviser to provide an update of the
25 outreach that's been carried out by that office,

1 particularly as it relates to environmental
2 justice. We're missing, lacking a Public Adviser,
3 so we're going to have to jump over that item.
4 Perchance she will still make it to the meeting.
5 If not, we'll maybe take some other steps.

6 With that I want to introduce Kerry
7 Willis, who is going to finish the hearing as the
8 Hearing Officer while Commissioner Pernell and I
9 sit back, relax and listen intently to the rest of
10 the day. So, Kerry, it's all yours.

11 HEARING OFFICER WILLIS: Thank you.
12 Before we begin I have talked to both parties
13 about my role as legal counsel in the Legal Office
14 of the Energy Commission. And I just wanted to
15 disclose for the record that I have been in staff
16 meetings with Mr. Westerfield in which the topic
17 may have come up of this case.

18 I have not participated in the project
19 in any substantive way, nor have I developed any
20 opinion or conclusions about the issues of this
21 case. But for the record I would like to ask each
22 party if they have any objections to my
23 participation as Acting Hearing Officer in this
24 case.

25 MR. FRESCH: The applicant has no

1 objection.

2 MR. WESTERFIELD: Ms. Willis, staff has
3 no objections, and we'll waive any opportunity for
4 voir dire examination.

5 HEARING OFFICER WILLIS: Thank you.
6 Background, we'd like to go over the background of
7 this case first.

8 On May 8, 2002, the City of Vernon filed
9 an AFC to build the Malburg Generating Station on
10 the existing site of the City of Vernon's existing
11 station A.

12 The AFC was filed as a six-month
13 process, but upon applicant's agreement the review
14 process was delayed pending resolution of certain
15 issues.

16 COMMISSIONER PERNELL: Excuse me, guys
17 on the phone, --

18 HEARING OFFICER GEFTER: Off the record.

19 (Off the record.)

20 HEARING OFFICER WILLIS: Staff filed the
21 staff assessment on September 26, 2002. The FDOC
22 was filed December 13, 2002. And the addendum to
23 the staff assessment was filed on December 24,
24 2002.

25 Final testimony was due by all parties

1 on February 3, 2003, and we did receive those
2 parties' further testimony.

3 The parties filed prehearing conference
4 statements on December 31, 2002. The statements
5 indicated that there are no disputed topics, and
6 the parties wish to submit testimony and documents
7 by evidence -- I'm sorry -- yeah, we're still
8 getting -- hearing you.

9 HEARING OFFICER GEFTER: Off the record.

10 HEARING OFFICER WILLIS: Please.

11 (Off the record.)

12 HEARING OFFICER WILLIS: The statements
13 indicated that there were no disputed topics and
14 the parties wished to submit testimony and
15 documentary evidence by declaration. We will
16 allow undisputed testimony to be submitted by
17 declaration today.

18 To insure a complete record we directed
19 applicant to provide live witnesses to testify on
20 the topics of project description and air quality
21 and we also have asked staff witnesses in air
22 quality and environmental justice to be available
23 by telephone.

24 The purpose of this hearing is to
25 receive evidence, including sworn testimony, to

1 establish the factual record necessary to reach a
2 decision on the AFC.

3 This is a formal evidentiary hearing.
4 Witnesses will testify under oath or affirmation
5 and are subject to cross-examination. The
6 reporter will administer the oath.

7 Applicant and staff have submitted sworn
8 witness declarations for the topics that are not
9 in dispute. We discussed these topics at the
10 prehearing conference on January 9, 2003.

11 The evidentiary hearing order indicates
12 which topics are submitted by declaration and
13 which ones will be presented by live testimony. A
14 party sponsoring a witness will establish the
15 witness' qualifications and ask the witness to
16 briefly summarize his or her testimony. Multiple
17 witnesses may testify as a panel as necessary.
18 The Committee may also question each witness.

19 We have distributed a tentative exhibit
20 list. I think both parties have seen that list
21 before. There's just been a few modifications.
22 I've added the latest filed testimony and moved
23 the FDOC down one number. So otherwise it's
24 basically the same list.

25 Please identify the exhibits relevant to

1 each topic as it is presented, and move the
2 pertinent exhibits into evidence as appropriate.

3 We will follow basically the schedule
4 shown with a few modifications. We'll start first
5 with project description with the applicant. And
6 then staff, if there's any further discussion on
7 project description. And then we'll move to the
8 topic of socioeconomics and environmental justice.
9 And then we'll move to air quality. And then
10 public health. And then we'll go down the rest of
11 the list as it is in order.

12 For the topics on which testimony is to
13 be entered into the record by sworn declaration we
14 ask the parties to state their positions regarding
15 the topics for the record so we can assess if
16 additional information is needed. So let's start
17 with the applicant and project description.

18 MR. FRESCH: Thank you, Hearing Officer
19 Willis. At this time, --

20 PRESIDING MEMBER BOYD: Excuse me, why
21 don't you now try moving the phone down on the
22 table facing in your direction. You'll have to
23 move those mikes, too.

24 MR. FRESCH: Can you guys hear us?

25 (Laughter.)

1 MR. FRESCH: Thank you, Hearing Officer
2 Willis. At this time the applicant would ask for
3 Ramon Abueg to be sworn in.
4 Whereupon,

5 RAMON ABUEG
6 was called as a witness herein, and after first
7 having been duly sworn, was examined and testified
8 as follows:

9 DIRECT EXAMINATION
10 BY MR. FRESCH:

11 Q Mr. Abueg, could you please tell us what
12 your role is with the Malburg Generating Station
13 project.

14 A I'm the Project Manager for the Malburg
15 Generating Station project.

16 Q Could you please briefly summarize your
17 qualifications?

18 A I'm currently the Assistant Director of
19 Engineering and Operations for the Utilities
20 Department, responsible for the day-to-day
21 management and operations of the existing electric
22 system. And I've been in this job for at least
23 six years; and I've been in the electric business
24 for about 20.

25 Q Mr. Abueg, you've previously submitted

1 written testimony, is that correct?

2 A That's correct.

3 Q Would you please briefly summarize in
4 the technical area of project description the
5 testimony for the Committee?

6 A In the area of project description let
7 me start by saying that the project will be
8 constructed on approximately 2.4 acres of the
9 existing station A in an industrial land use area
10 located at 2715 East 50th Street.

11 It's an existing electric generating
12 facility that began in 1933 and consists of a
13 substation with a 69 kV switchyard and a building
14 that contains five 3.5 megawatt diesel fuel
15 reciprocating engines, two internal combustion
16 generators, a control room, a cooling tower and
17 heat exchangers and transmission towers.

18 Power from the site is distributed
19 through the Vernon substation 69 kV switchyard.

20 The site will accommodate the new MGS,
21 the Malburg Generating Station facility, a
22 reclaimed water treatment facility, and emission
23 control equipment, control building, storage
24 tanks, parking area and stormwater retention
25 basins.

1 MGS will consist of two Alston GTX100
2 frame type natural gas combustion turbine
3 generators, CTGs, equipped with dry lo-NOx, or DLN
4 combustors for oxides of nitrogen; two heat
5 recovery steam generators, or HRSG; a single
6 condensing steam turbine generator or STG; a
7 cooling tower and support equipment.

8 Each combustion turbine or CTG will each
9 be regulated at 42.2 megawatts. The CTGs will be
10 equipped with evaporative inlet air coolers to
11 enhance turbine performance in hot weather. Hot
12 exhaust gases from the combustion turbines will be
13 directed to two HRSGs. And the HRSGs are equipped
14 with duct burners to increase the steam output.

15 The steam produced by the HRSGs will be
16 combined to drive a single steam turbine generator
17 and Alston MP24 engine. The steam turbine
18 generator has a rated output of 40 megawatts
19 unfired, and 55 megawatts with duct burning.

20 The total gross output of the MGS will
21 be 139 megawatts and the net output will be 134
22 megawatts.

23 The HRSGs will also include selective
24 catalytic reduction, or SCR, emissions control
25 equipment for further reduction of NOx and an

1 oxidation catalyst for reduction of carbon
2 monoxide and volatile organic compounds, VOC,
3 emissions in the exhaust gas.

4 The gases from each HRSG will be
5 exhausted to the atmosphere through a stack that
6 will be 110 feet in length.

7 The project will incorporate the
8 following state of the art air pollution controls
9 that reflect best available control technology, or
10 BACT, to reduce emissions.

11 The CTGs will have DLN burner technology
12 and SCR to reduce NOx emissions to 2 parts per
13 million on a one-hour rolling average with 15
14 percent oxygen.

15 An oxidation catalyst to limit CO
16 emissions at 2 parts per million based on a three-
17 hour rolling average. And limit VOC emissions to
18 1.2 parts per million based on a one-hour rolling
19 average.

20 The pipeline quality natural gas as fuel
21 that will be used for the project will limit the
22 SO2 and PM10 emissions.

23 The increase in regulated air pollutant
24 emissions from the MGS will be offset by the City.
25 Dr. Krishna Nand, in his presentation, will

1 discuss the details on how the City will offset
2 these emissions from the MGS project.

3 The project will not require any new
4 transmission line facilities. The project will be
5 connected to the existing 69 kV buss in the Vernon
6 substation in station A. The power from the MGS
7 will be distributed through the existing Vernon
8 substation to serve the load of the customers of
9 the City of Vernon.

10 Natural gas will be supplied from a
11 1300-foot pipeline that will be constructed to
12 deliver fuel from the existing gas system located
13 along Fruitland Avenue.

14 The MGS has been designed to operate
15 with a minimum potable water requirements. The
16 primary source of makeup water for the MGS will be
17 reclaimed water supplied by the City and purchased
18 from the Central Basin Municipal Water District
19 under a long-term contract. It will be delivered
20 to the project site via an 18-inch reclaimed water
21 pipeline connecting to the existing Central Basin
22 Municipal Water District's reclaimed water
23 distribution system located approximately 10,000
24 feet from the project.

25 The MGS will utilize reclaimed water

1 exclusively in the cooling tower and will require
2 peak demand of approximately 1000 gpm, or gallons
3 per minute, of reclaimed water.

4 The use of reclaimed water will minimize
5 the impact on potable water resources in water-
6 constrained southern California. Potable water
7 will be used only for domestic use, service water
8 and as an emergency backup supply to the project.
9 Potable water needed for the project will be
10 provided by the existing six-inch waterline
11 already at the site.

12 A new 1300-foot-long sewer line from the
13 project to Fruitland Avenue will be required for
14 discharge to the local sewer. From that point on
15 the existing sewer trunk is capable of having
16 always water flows from the project. The
17 wastewater will flow to the County Sanitation
18 District of Los Angeles County existing to the
19 facility. No improvements to the treatment
20 facility are required. The treatment facility is
21 capable of handling all those water flows from
22 MGS.

23 The capital costs of MGS is expected to
24 be about \$153 million. We expect construction to
25 begin on the project immediately upon

1 certification and take approximately 16 to 18
2 months including commissioning period.

3 Commercial operation of MGS is expected
4 to begin by the fall of 2004. When in operation
5 the power plant will be controlled and monitored
6 by highly trained operators during each operating
7 shift. The maintenance and supervisor personnel
8 will generally be present during the day shift and
9 as required for specific operations and
10 maintenance activities during the night shifts.

11 The MGS is designed to serve the City's
12 electric utility customers. The City of Vernon
13 supports employment in the surrounding
14 communities. A recent study by the Los Angeles
15 County Development Corporation shows that there
16 are approximately 45,000 jobs in the City of
17 Vernon. Further analysis using the IMPLAN, which
18 stands for impact analysis for planning model, MGS
19 will result in 180 direct jobs and 284 indirect
20 during the construction. An additional 32 direct
21 jobs will be created and 144 indirect jobs when
22 the plant becomes in operation.

23 The City expects that MGS, due to its
24 state of the art pollution control, generation
25 equipment and combined cycle configuration will be

1 one of the most efficient generation facilities
2 available.

3 The plant will operate with a capacity
4 factor between 60 and 85 percent and will have an
5 availability factor of 90 to 98 percent. It is
6 projected that the MGS will operate from five to
7 seven days per week, depending upon customer load
8 and weather conditions.

9 MGS will be able to operate at seven
10 different levels of electrical output. When
11 necessary MGS will be able to operate at partial
12 load by reducing the operating level of the CTGs
13 or by placing one of the CTGs on standby.

14 The potential adverse environmental
15 impacts and potential cumulative impacts related
16 to the project will be mitigated to levels of
17 insignificance in conformance with all LORS. The
18 project is adequately described in exhibit 8,
19 sections 1-5, 7 and 10 that was introduced by the
20 City.

21 The project has been designed so that it
22 is very feasible. The project will be constructed
23 in compliance with LORS; and the project will be
24 operated reliably, efficiently and safely.

25 The project has a planned life of about

1 30 years or longer. Whenever the facility is
2 closed, either temporarily or permanently, the
3 closure procedures will follow the plan provided
4 in the AFC and the staff assessment discussions on
5 facility closure, in conformance with LORS and
6 conditions of certification.

7 That concludes my project description.

8 MR. FRESCH: Thank you, Mr. Abueg. At
9 this time Mr. Abueg is available for cross-
10 examination. Are there any questions from the
11 Committee?

12 HEARING OFFICER WILLIS: Staff, do you
13 have any questions?

14 MR. WESTERFIELD: We have no questions
15 for Mr. Abueg.

16 PRESIDING MEMBER BOYD: No questions.

17 HEARING OFFICER WILLIS: Is there any
18 public comment? Okay, would you like to move your
19 exhibits into evidence?

20 MR. FRESCH: Yes. Thank you. At this
21 time the applicant would like to move the exhibits
22 that Mr. Abueg is sponsoring into the record. The
23 applicant proposes that Mr. Abueg's actual
24 testimony be new exhibit 39; we've filed 38
25 exhibits thus far. And we would also like to move

1 exhibit 1, the portions of the project
2 description, into the evidentiary record.

3 HEARING OFFICER WILLIS: Exhibit 39
4 would be which testimony? Because we have the
5 applicant's testimony that you filed on February
6 3rd as exhibit --

7 MR. FRESCH: Oh, exhibit 38, --

8 HEARING OFFICER WILLIS: 38, okay.

9 MR. FRESCH: -- sorry. That portion of
10 exhibit 38 that applies to project description
11 that Mr. Abueg filed declarations are --

12 HEARING OFFICER WILLIS: Okay.

13 MR. FRESCH: And exhibit 1.

14 HEARING OFFICER WILLIS: Are there any
15 objections?

16 MR. WESTERFIELD: No objections.

17 HEARING OFFICER WILLIS: Okay, thank
18 you.

19 (Pause.)

20 HEARING OFFICER WILLIS: Excuse me, Mr.
21 Fresch, before we go on we did have one question
22 on the diesel, as far as the project description.

23 MR. FRESCH: Yes.

24 HEARING OFFICER WILLIS: If you could
25 just clarify that aspect.

1 MR. FRESCH: The City's power plant
2 that's existing -- can you hear me?

3 HEARING OFFICER WILLIS: That's better
4 now --

5 MR. FRESCH: Okay, the City's power
6 plant that's existing on the site --

7 HEARING OFFICER WILLIS: Can your
8 witness answer that question?

9 MR. FRESCH: Sure.

10 MR. ABUEG: What is the question? With
11 respect to the use of the diesels?

12 HEARING OFFICER WILLIS: Right, and as
13 far as the project description I think that had
14 been discussed whether it was part of the project
15 description.

16 MR. ABUEG: We cited the diesels only as
17 part of the existing site, but it's really not
18 part of the project. Nothing will be disturbed
19 with respect to the building and the diesels. The
20 diesels will continuously be used as they are now.
21 They are emergency units only.

22 HEARING OFFICER WILLIS: Okay, thank
23 you. At this time we'll move on to
24 socioeconomics; and I believe we have the Public
25 Adviser in the audience, who, if you're ready to

1 address the Commission regarding the public
2 outreach.

3 MS. MENDONCA: Thank you. Basically the
4 Public Adviser did an outreach in the project as
5 soon as the application for certification was
6 received at the Energy Commission. And we sent
7 copies of the application for certification to the
8 Huntington Park County Library. And to assist the
9 librarian in placing that, we also included some
10 posters; a project description which had been
11 translated into English and Spanish. So we sent
12 two copies of the poster -- where the public, when
13 they enter the library, could learn where to find
14 the AFC, the application for certification. And
15 also posters were placed for the public to pick up
16 when they came to the library.

17 We sent 300 copies of the project
18 description to the Vernon Elementary School. And
19 those project descriptions were sent home with the
20 students.

21 We also sent 100 copies to the Chamber
22 of Commerce here in Vernon, and the City of Vernon
23 Utilities Department. And those copies, we
24 assume, were then distributed to the public.

25 The City of Vernon Utilities Department

1 Project Manager put the project description on the
2 front page of their summer edition of The Vernon
3 Journal.

4 We had 4500 bilingual English and
5 Spanish newspaper inserts which gave the time,
6 date and place of the informational hearing and
7 the site visit, which were distributed in The
8 Wave, which is a local newspaper, in their June
9 26, 2002 edition. The Wave covers Huntington
10 Park, Maywood, Commerce and Bell.

11 We also sent 300 copies of the bilingual
12 English/Spanish notification to the City of Vernon
13 Elementary School; 11 copies to the Chamber of
14 Commerce; and 100 copies to the City of Vernon.

15 And basically this project, we have
16 responded to the public calls that have come to
17 our office and docketed any comments that have
18 come in.

19 We have no other information to report.
20 Are there questions?

21 COMMISSIONER PERNELL: Ms. Willis, you
22 say that -- Ms. Mendonca, you said that you
23 respond to the calls coming in to the Public
24 Adviser's Office. What was the nature of the
25 calls?

1 MS. MENDONCA: Okay. We had a call from
2 Gabrielino Ba -- t-o-n-g-d-a of the Tribal
3 Council, and she had expresses concerns about
4 mitigation measures. And we answered her question
5 about the status of the project. And then turned
6 her over to staff on that question.

7 We also had a call from Mr. Irving
8 Pacheco who's a Field Representative from
9 Assemblyman Marco Firebaugh's Office. And we
10 added him to the Energy Commission's mailing list
11 so that he could be up to date on our project.

12 We had received a contact from Cynthia
13 Verdugo Peralta who serves on the South Coast Air
14 Quality Management District. And, again, our
15 contact with her was to answer her questions and
16 place her on the mailing list.

17 And that pretty much covers the
18 information that I have. Of course, the Public
19 Adviser does not encompass all public
20 participation. We can only really keep track of
21 those calls that come directly to our office.

22 COMMISSIONER PERNELL: Thank you.

23 HEARING OFFICER WILLIS: Have you been
24 contacted by the Communities for a Better
25 Government --

1 MS. MENDONCA: Communities for a Better
2 Environment, CBE. When we were first in the
3 community we had several phone calls with
4 Communities for a Better Environment. And we know
5 them because they intervened in other places in
6 the area. And they would attend the informational
7 hearing and site visit. And they have also
8 attended some of the workshops. But we have never
9 had from them that they wished to intervene in
10 this proceeding.

11 Our contact there was Scott Kuhn,
12 K-u-h-n.

13 HEARING OFFICER WILLIS: Okay, thank
14 you.

15 At this time we turn to the applicant.

16 MR. FRESCH: In the technical area of
17 socioeconomics the applicant has previously
18 submitted testimony in exhibit 38, a signed
19 declaration. Included portions of previously
20 submitted exhibits 1, 2, 3, 25 and 32. And the
21 applicant proposes at this time to move that
22 portion of exhibit 38 with respect to
23 socioeconomics into the record.

24 HEARING OFFICER WILLIS: Is there any
25 objections?

1 MR. WESTERFIELD: No objections.

2 HEARING OFFICER WILLIS: Thank you. At
3 this time let's move to staff. And I believe we
4 have Mr. Edwards on the line.

5 MR. WESTERFIELD: Well, before we might
6 turn to Mr. Edwards, Mr. Pfanner would like to
7 simply address a question on the census data that
8 was raised in the prehearing conference.

9 HEARING OFFICER WILLIS: Should we go
10 ahead and have him sworn in then?

11 MR. WESTERFIELD: No, I don't think it's
12 a matter of testimony. It's simply a matter of
13 pointing out how our addendum addressed questions
14 raised at the prehearing conference. So, --

15 HEARING OFFICER WILLIS: I'd like to
16 have him -- well, since you're going to be here
17 we'll just go ahead and have him sworn in at this
18 point in time.

19 Whereupon,

20 WILLIAM PFANNER
21 was called as a witness herein, and after first
22 having been duly sworn, was examined and testified
23 as follows:

24 HEARING OFFICER WILLIS: Thank you.

25 MR. PFANNER: Briefly, at the prehearing

1 conference the Hearing Officer requested that the
2 section of the socioeconomic assessment that used
3 1990 data to define income levels be updated to
4 use 2000 data. And this information they asked us
5 to present here at the evidentiary hearing.

6 And in response, the 1990 data to define
7 income levels in the staff assessment has been
8 updated to use 2000 data numbers. This resulted
9 in no change in the project's environmental
10 justice assessment. The socioeconomic section
11 has been amended to reflect the 2000 data for
12 income levels on page 4.8-7 in the staff
13 assessment, it's been amended to change the year
14 from 1990 to 2000, and to change the percentage
15 from 28.6 to 32.03.

16 HEARING OFFICER WILLIS: Thank you.
17 Proceed.

18 MR. WESTERFIELD: We have nothing else
19 to present.

20 HEARING OFFICER WILLIS: Did you want to
21 call your witness on the phone?

22 MR. WESTERFIELD: No, we had no
23 intentions of calling a staff witness. However,
24 if the Committee has a question for him he is
25 available.

1 PRESIDING MEMBER BOYD: No questions.

2 HEARING OFFICER WILLIS: Any questions
3 from opposing counsel?

4 MR. FRESCH: The applicant has no
5 questions.

6 HEARING OFFICER WILLIS: Okay. Mr.
7 Edwards, can you hear us? I don't know if he can
8 hear us.

9 MR. FRESCH: Dale Edwards, can you hear
10 us?

11 MR. EDWARDS: Yes, I heard that, but
12 nothing --

13 (Laughter.)

14 HEARING OFFICER WILLIS: Tell him he can
15 go.

16 MR. FRESCH: You can go now.

17 MR. EDWARDS: Thank you. Goodbye.

18 HEARING OFFICER WILLIS: Thank you,
19 we'll move on to air quality. And I believe we
20 have the District here, so I'd like to start with
21 the applicant and then move to the District, and
22 then we'll move to staff.

23 MR. FRESCH: Thank you, Hearing Officer
24 Willis. At this time the applicant wishes to call
25 Dr. Krishna Nand to be sworn in.

1 Whereupon,

2 KRISHNA NAND

3 was called as a witness herein, and after first
4 having been duly sworn, was examined and testified
5 as follows:

6 HEARING OFFICER WILLIS: Thank you.

7 DIRECT EXAMINATION

8 BY MR. FRESCH:

9 Q Dr. Nand, could you please describe your
10 role with the Malburg Generating Station project?

11 A I am the Project Manager for the
12 application for certification. And I also managed
13 and participated in the preparation of the air
14 quality section of this application for
15 certification.

16 Q Thank you. Could you briefly summarize
17 your qualifications for the Committee?

18 A I have a PhD degree in physics; and I
19 have been working the air quality area for the
20 last 28 years. And last three years I've been
21 involved doing air quality analysis for a number
22 of power plants in southern California.

23 Q Thank you, Dr. Nand. You previously
24 submitted written testimony, is that correct?

25 A Yes, please.

1 Q Could you briefly summarize your
2 testimony for the Committee?

3 A As Ramon mentioned, the Malburg
4 Generating Station will include two Alston GTX100,
5 natural-gas fired combustion turbines with heat
6 recovery systems -- generators, -- cell cooling
7 tower; and also a diesel-power fire water pump
8 will be installed.

9 The combustion turbines which are
10 proposed to be installed probably will be one of
11 the best in the country because we are going for
12 the best possible control systems on these units.
13 NOx will be controlled to 2 parts per million; --
14 parts per million; volume CO will be two parts per
15 million; and VOC will be 1.2.

16 We are doing something unique to this
17 project. We are installing a CO catalyst from the
18 day one when we are going to the commissioning
19 mode. This is the first time in a power plant
20 project where I have been involved, which we are
21 doing, in the commissioning period.

22 We will be using the reclaimed water for
23 operating this power plant. And another thing
24 which is very important that in fact there are no
25 pedestrians or nobody lives close to the power

1 plant, so it is in perfect industrial area.

2 The applicant performed an air quality
3 analysis including the emission offset
4 requirements for the MGS project. And we followed
5 all the rules and regulations established by South
6 Coast Air Quality Management District for
7 calculating the emission offset requirements.

8 The California Energy Commission Staff
9 issued their staff assessment. They identified
10 air quality as an area of special concern,
11 especially the staff pointed out that we had not
12 offset the SO2 emissions coming from the Malburg
13 Generating Station project; and also the PM10
14 emissions from the tower.

15 It is important to mention that
16 applicant does not have to mitigate these
17 emissions due to the two following reasons: The
18 first reason is as per the South Coast AQMD rule
19 1304, the emissions of SOx, since they are below
20 the potential to emit limit of four tons per year,
21 so that exempt from the offset requirements.

22 Also, as per the existing rule 219, the
23 cooling tower emissions, PM10 emissions from the
24 cooling tower are exempt from the offset
25 requirements.

1 Subsequent to the release of the staff
2 report it was clarified by the South Coast AQMD
3 that the increased emissions of SOx from the MGS
4 project would be offset by debiting the AQMD
5 account at the ratio of 1.2 to 1.

6 What it means that the sulfur dioxide
7 emissions, SOx emissions, from the MGS project, on
8 a daily basis these emission offsets are
9 calculated on a daily basis. They were estimated
10 at about seven pounds per day, and the District
11 will debit from their account eight pounds per day
12 of the sulfur dioxide emissions. So the emission
13 offset will be taken care by the District so we
14 don't have to offset it.

15 Further, it was clarified by the
16 District that if the applicant buys the emission
17 offset from the priority reserve, which is
18 established by South Coast AQMD and power plants
19 are entitled to withdraw or take the priority
20 reserve for offsetting the emissions of PM10, then
21 District will internally offset at the ratio of
22 1.2 to 1. What it means that if we ask for 100
23 pounds of PM10 from the priority reserve, the
24 District will debit 120 pounds from their account.

25 The applicant is planning to purchase or

1 procure 160 pounds of PM10 from the priority
2 reserve so the District will actually debit 192
3 pounds. So basically we have got 32 pounds extra
4 of the PM10 which will be debited by District.
5 And that offsets more than the PM10 emissions from
6 the cooling tower, which is estimated at about six
7 pounds per day.

8 The CEC Staff has taken the above
9 information into consideration and has now
10 concluded that no additional SOx or PM10
11 mitigation would be required.

12 Additional details of the SOx and PM10
13 mitigation are provided in the final addendum to
14 the staff assessment report.

15 The staff had also concluded in the
16 staff assessment that the basic construction
17 emissions would exceed the state and federal
18 ambient air quality standards, especially for
19 PM10, NOx and CO.

20 The main reason is that, as you have
21 seen this at the site visit, the project site is
22 very small and the fenceline, project fenceline
23 and the construction area will be very close. So
24 the impacts will be very high outside the
25 fenceline.

1 The CEC Staff has recommended some
2 mitigation measures, and the applicant has agreed
3 and accepted those conditions of certification.
4 And we will comply with those conditions of
5 certification.

6 Thus, what we feel that we have
7 mitigated all the impacts and basically now there
8 will be no air quality-related impacts which have
9 not been mitigated.

10 Thank you.

11 Q Thank you, Dr. Nand.

12 MR. FRESCH: Dr. Nand is available for
13 cross-examination. Are there any questions from
14 the Committee?

15 HEARING OFFICER WILLIS: Start with Mr.
16 Westerfield.

17 CROSS-EXAMINATION

18 BY MR. WESTERFIELD:

19 Q Actually, I do have one question, Mr.
20 Nand. I assume you're familiar with the
21 conditions of certification proposed by the CEC
22 Staff?

23 A Yes, please.

24 Q Are all of these conditions feasible, in
25 your view?

1 A I think they are feasible.

2 MR. WESTERFIELD: Thank you.

3 MR. FRESCH: Thank you, Dr. Nand. Dr.

4 Nand is sponsoring portions of exhibits applicant
5 has previously submitted. In addition to his
6 testimony, we are proposing that all of these --

7 MR. FRESCH: Are you guys talking to us?

8 MR. LOYER: (inaudible).

9 MR. FRESCH: Can you hear us, Joe?

10 MR. LOYER: Hold on a moment.

11 (Pause.)

12 MR. LOYER: Okay.

13 MR. FRESCH: At this time applicant
14 would like to move into the evidentiary record the
15 following exhibits that Dr. Nand is sponsoring,
16 being portions of exhibit 1, exhibit 2, exhibit 3,
17 exhibit 4, exhibit 5, 6, 7, 8, 9, 10, 11, 12, 14,
18 16, 18, 26, 30, 33 and his testimony previously
19 submitted by declaration, exhibit 38. At this
20 time we'd like to move all of those exhibits into
21 the evidentiary record.

22 HEARING OFFICER WILLIS: Thank you. Are
23 there any objections?

24 MR. WESTERFIELD: No objections.

25 HEARING OFFICER WILLIS: At this time

1 we'd like to move on to the District's I guess
2 comment.

3 MR. NAZEMI: Thank you, Ms. Willis. My
4 name is Mozen Nazemi, last name is Nazemi,
5 N-a-z-e-m-i. I'm Assistant Deputy Executive
6 Officer at South Coast Air Quality Management
7 District. And I'm here representing the AQMD with
8 respect to this project.

9 Appreciate the opportunity to make
10 comments in this evidentiary hearing. My comments
11 are basically two and a final conclusion, so I'll
12 just summarize those for you.

13 The first comment is regarding the
14 emissions offsets and the description that is
15 provided in the staff assessment for this project,
16 there are two areas that we'd just like to point
17 out some minor changes that need to be reflected.

18 One is on page C-3, second paragraph
19 there is a discussion of the potential CO
20 emissions offsets with respect to priority
21 reserve. And I'd like to point out that although
22 the applicant had, at one point, considering to
23 purchase CO emissions offsets from our priority
24 reserve account, subsequent to that they provided
25 emission reduction credits from open market for

1 all their CO emissions. So therefore there will
2 be no request or purchase made from our priority
3 reserve account for CO emissions.

4 The second point, which is really a
5 simple point, but it may sound a little
6 complicated, is that throughout the staff
7 assessment supplement that was prepared, or the
8 addendum I should say, that was prepared
9 subsequent to the prehearing conference, there is
10 a reference made to the SOx emissions offset that
11 the District will provide from our own internal
12 account.

13 And I'd like to point out that we will
14 provide that from our own internal account.
15 However, the ratio by which the SOx emissions will
16 be provided, unlike all the other pollutants, will
17 be at a 1-to-1 ratio and not a 1.2 to 1 ratio.
18 And the reason for that is that under both federal
19 Clean Air Act and California Clean Air Act, this
20 facility is not a major source for sulfur oxides
21 emissions.

22 And as a result there is no offset ratio
23 requirement from a federal perspective, and there
24 is no no-net emission increase requirement under
25 the California Clean Air Act from the state

1 perspective.

2 However, regardless of that, because we
3 have an internal accounting system that we, every
4 year, summarize our debits and credits for our
5 account, we still reduce our internal account for
6 the emissions from non-major sources. And in this
7 case, mainly maintenance down four times per year
8 sources. And therefore we will debit our account
9 at a ratio of 1-to-1 rather than 1.2-to-1.

10 So there is a number of places in this
11 document that that discussion has been elaborated
12 about our NSR. And I think staff did a very good
13 job to explain that. And as I mentioned, it's a
14 little bit more complicated, and therefore I just
15 want to point that out.

16 The main place probably where this
17 change needs to be made, and then I'll be happy to
18 work with the staff to add that into the
19 description, in tables 10, 25 -- I'm sorry, not
20 table 10 -- tables 25 and 26, which are on pages
21 C-4 and C-5.

22 If you look at those tables SOx emission
23 offsets as District mitigation are always shown as
24 a 1.2-to-1, and it should be equal to the actual
25 liability. In this case we are providing seven

1 pounds per day of emission reduction from our
2 internal account.

3 With those two explanations --

4 PRESIDING MEMBER BOYD: Excuse me. Do
5 you want to translate that to the same types of
6 numbers that are consistent in this table?

7 MR. NAZEMI: Yes, sir, Commissioner
8 Boyd. In table 25 the emissions are listed in
9 pounds per year.

10 PRESIDING MEMBER BOYD: Correct.

11 MR. NAZEMI: And the liability is shown
12 as 2123.

13 PRESIDING MEMBER BOYD: And that's what
14 you will be providing?

15 MR. NAZEMI: That's what we will provide
16 from --

17 PRESIDING MEMBER BOYD: I just wanted
18 that on the record.

19 MR. NAZEMI: -- from our internal
20 account. And table 26 is in pounds per day. Even
21 though table 26 shows six pounds per day, I think
22 our method of calculation showed seven pounds, and
23 the explanation that there is a different
24 assumption made. We look at the worst case
25 potential, and therefore we will use -- we will

1 deduct seven pounds per day from our internal
2 account.

3 PRESIDING MEMBER BOYD: Okay.

4 DR. NAND: -- a question.

5 HEARING OFFICER GEFTER: I have a
6 question, too, just with respect to tables 25 and
7 26, where they indicated excess mitigation. Under
8 your calculation there's no excess.

9 MR. NAZEMI: That's correct.

10 HEARING OFFICER WILLIS: That's for SOx
11 in both tables.

12 MR. NAZEMI: Thank you for that
13 correction.

14 DR. NAND: I have a question, Mozen,
15 that seven pounds per day which you will offset,
16 so for calculation of the annual thing, what staff
17 is doing there, multiplying by say 365. So I just
18 did quick math; it'll be 2555. So on an annual
19 basis --

20 HEARING OFFICER WILLIS: Excuse me.
21 Excuse me. We need to have, actually continue
22 with the District. And then if Mr. Fresch would
23 like to ask a question at that point in time.

24 MR. NAZEMI: Okay, thank you. I will
25 continue my -- or conclude my testimony. And

1 given the gist of the question that I just
2 received I might as well explain here that since
3 the emissions calculations in table 25 are based
4 on different assumptions, and as I mentioned, for
5 the District's purposes, for offset purposes all
6 of our new source review regulations require us to
7 calculate them on a pounds-per-day basis. But
8 once they're calculated on a pounds-per-day, they
9 will be translated to 365 days a year.

10 So the total mitigations on an annual
11 basis in table 25 will be seven times 365. And
12 whatever that number adds up to, there may be
13 excess mitigations for annual basis in table 25,
14 but no excess mitigations for a daily basis on
15 table 26.

16 And finally, I have a certification
17 letter that I've handed to staff which is pursuant
18 to Public Resources Code section 25523(d)(2),
19 which is to certify that the emissions offset
20 identified for the Malburg Generating Station
21 project are complete. And that based on the
22 applicant's filing, the applicant will obtain the
23 offsets within the time required by the District's
24 rule.

25 And I make this statement based on the

1 analysis conducted for the final determination of
2 compliance that we submitted to the CEC.

3 HEARING OFFICER WILLIS: We'll need a
4 copy of that letter if we can get that to the
5 dais; and also, does that include a table of the
6 offset liability and mitigation?

7 MR. NAZEMI: The tables are all included
8 in our final determination of compliance. And I
9 have two extra copies of the letter if you would
10 like to look at it. But, the letter, itself, does
11 not have a table attached to it.

12 (Pause.)

13 MR. WESTERFIELD: Hearing Officer
14 Willis, we're having some more copies of that
15 letter made right now. And as soon as the copies
16 are made we'll distribute them to the Committee.

17 HEARING OFFICER WILLIS: Great.

18 COMMISSIONER PERNELL: I did have a
19 question but I think your letter answers my
20 question, which was given the corrections that
21 were made does it change your opinion on the air
22 quality item?

23 MR. NAZEMI: No, it does not. The
24 corrections are merely for the record. And as I
25 mentioned, under both our rules and regulations

1 and federal and state Clean Air Acts, the project
2 offsets are actually not required for SOx.
3 However, the District still provides offsets from
4 our internal account at a one-to-one ratio. So
5 the project meets our requirements.

6 COMMISSIONER PERNELL: Thank you.

7 MR. NAZEMI: I did do the calculation.
8 I believe the number will be 2555 pounds per day
9 for table 25.

10 COMMISSIONER PERNELL: Ms. Willis, if I
11 could do a follow up with the applicant, and this
12 is a follow up on Mr. Westerfield's question about
13 whether it's feasible, the staff recommendations
14 for air quality. I think he said, he asked the
15 question was it feasible and you indicated that it
16 was. And I think -- my question is does the
17 applicant intend to abide by staff recommendations
18 on the air quality?

19 MR. FRESCH: Commissioner Pernell, I'll
20 have Dr. Krishna Nand answer that question.

21 DR. NAND: Yes, please, we will abide by
22 the conditions of certification.

23 COMMISSIONER PERNELL: Thank you.

24 HEARING OFFICER GEFTER: I have a
25 question with respect to your letter certifying

1 that the offset package complies with the statute.

2 We need a table or a list of what the
3 actual offsets are. And even though there are
4 requirements in the FDOC and there is some
5 discussion in staff's assessment, as well as in
6 the application, we don't have the final document
7 or final assessment of what the offset package is.

8 So, I'm sure the Air District has
9 received something from the applicant that
10 indicates what the offset package is, or if the
11 applicant has something that they can put together
12 and give the Committee, just to give us a list of
13 what the offsets are. That would be very helpful
14 to the record.

15 MR. FRESCH: Hearing Officer Gefter, the
16 applicant can submit a table that would show and
17 reflect that offset package.

18 HEARING OFFICER GEFTER: Very good. The
19 other question I have for the Air District is
20 regarding the priority reserve credit program.
21 Could you describe that to us?

22 MR. NAZEMI: Sure, I'll be happy to do
23 that. Under the District's new source review rule
24 we have incorporated certain number of exemptions
25 for sources that meet specific requirements.

1 For example, I talked about the sulfur
2 oxide emissions and exemption in our new source
3 review rule. Those are specifically for smaller
4 sources, less than four tons per year.

5 Priority reserve is another provision in
6 our new source review rule, which mainly applies
7 to what we typically call essential public
8 services. Those are government entities that
9 serve for sewer, firefighting, police and other
10 types of essential public services.

11 Due to the increase in demand for
12 energy, we amended our priority reserve rule and
13 allowed power plants to also access credit from
14 our priority reserve account in order to be able
15 to help with the California State's energy demand.

16 And the main purpose for doing that was
17 because of scarcity of third-party emission
18 reduction credits for PM10 and some of the other
19 pollutants.

20 But in general how that works is for all
21 of our sources that are not providing their own
22 emission reduction credits at the end of the year
23 we do an accounting. And for sources that are
24 considered to be federal major sources, all those
25 emissions that were not offset by the applicant

1 through either exemptions under 1304 or priority
2 reserve exemptions, the District provides offsets
3 from our own internal account at a 1.2-to-1 ratio.

4 For sources that are not federal major
5 sources, but yet they are subject to the state
6 law, and are considered major source under the
7 state definition, as well as those that are below
8 the four tons per year threshold, we provide
9 offsets from our state account to make sure that
10 they comply with the no-net emission increase and
11 our rules and regulations.

12 And Those internal accounts are accounts
13 that we have utilized from sources that either
14 shut down or control emissions over and beyond
15 what's required without coming in and applying to
16 get an emission reduction credit certificate.

17 And that's how the bank is set. And
18 deposits go into the bank every year and
19 withdrawals come out of the bank every year. And
20 we keep a tracking system to every year account
21 for the balances left in those banks.

22 HEARING OFFICER GEFTER: Thank you. Is
23 the priority reserve program a limited program for
24 just a certain number of years where power plant
25 applicants apply for those credits?

1 MR. NAZEMI: The essential public
2 services priority reserve is not a limited program
3 in terms of the number of years. However, there
4 are certain amounts of credits that will available
5 each quarter for priority reserve usage that we
6 allocated when we adopted the rule.

7 In terms of the power plants, I believe
8 we have a restriction in terms of when the program
9 sunsets. But that program, and I don't recall
10 that offhand, but that program still is in effect.
11 Therefore, this project will be qualified to
12 obtain those credits.

13 I'd like to point something else out
14 too, in terms of the priority reserve program.
15 The way the District utilizes the mitigation fees
16 that are paid to the District for purchase of
17 these credits is actually not only we deduct the
18 credits from our own internal account, but we use
19 those funds -- they don't go into our general fund
20 and pay salaries of the employees.

21 Those funds are actually then reinvested
22 back in emission reduction projects within the
23 South Coast Air Basin. Therefore, there will be
24 an additional benefit that will accomplish from
25 reinvestment of those funds.

1 And in the case of Malburg, even though
2 the Energy Commission is at the point of
3 determining whether the Presiding Member's report
4 should go forward and ultimately the project be
5 licensed, the permit that the South Coast AQMD is
6 issuing is not yet issued. Mainly because this
7 facility is a Title 5 source, and we have to,
8 under the EPA delegation, issue our -- under the
9 EPA program, Title 5 program, issue a Title 5
10 permit to this source.

11 But we cannot issue that permit until
12 under state law the CEQA requirements being met.
13 And the AFC is an equivalent to CEQA, therefore we
14 can't issue our permit until you do your
15 licensing.

16 The project proponent, however, has to
17 have purchased all the priority reserve credits
18 before we can grant them the permits. Those two
19 things needs to be done before we can issue our
20 final permit.

21 HEARING OFFICER GEFTER: Just a
22 clarification. In terms of examining the priority
23 reserve credits, you know, when the District does
24 that, and the program sunsets, will that still be
25 in effect for this project or any other project

1 that has applied for priority reserve credits? I
2 mean how does that --

3 MR. NAZEMI: Those credits will be
4 permanently retired from our account, so they will
5 not be redeposited back into the account. If that
6 answers your question.

7 PRESIDING MEMBER BOYD: Mr. Nazemi, can
8 I ask you a quick question. Having lived through
9 two years on the Governor's generation team, I
10 understand all this stuff. But you just raised a
11 question in my mind of the revenues to your
12 priority account for purchasing additional
13 credits, the fees you collected for those power
14 plants that were allowed to run beyond their
15 ceilings and what-have-you, has that been a
16 revenue source for this particular account? The
17 past couple of summers where limits have been
18 bumped and offset fees had been paid.

19 MR. NAZEMI: No, there has been,
20 actually we keep three separate accounts at the
21 District. One of them is specifically this
22 account, which we talked about, and it's called
23 priority reserve account for power plants.

24 We have another account that I believe
25 is what you've mentioned, and it's called

1 mitigation program account, which is under the
2 Governor's executive order and under our rules, we
3 allow the power plants, and those are mainly
4 existing power plants, to exceed their emissions
5 limits or allocations as long as they pay a fee
6 into a program where we go out and again get
7 emission reduction credits.

8 Actually we have the third account that
9 you're probably aware of, and that's the peaking
10 power plant ERC account that ARB established. And
11 we implement it for the Air Resources Board. And
12 we have that account that also we track with Air
13 Resources Board.

14 PRESIDING MEMBER BOYD: Okay, thank you.

15 HEARING OFFICER WILLIS: Thank you very
16 much.

17 MR. NAZEMI: Thank you.

18 COMMISSIONER PERNELL: Thank you for
19 being here.

20 HEARING OFFICER WILLIS: At this time
21 we'd like to turn to staff and ask Mr. Loyer if
22 he's on the line still.

23 MR. FRESCH: Joe, are you there?

24 MR. LOYER: Yes, I'm here. I'm still
25 here.

1 MR. FRESCH: Joe, they're going to
2 decide whether they're going to talk to you.

3 HEARING OFFICER WILLIS: If you could
4 have him sworn in, please.

5 MR. WESTERFIELD: I can't swear him in,
6 but somebody --

7 HEARING OFFICER WILLIS: You can ask for
8 him to be -- if you need to call him.

9 MR. WESTERFIELD: Well, actually staff
10 does not have any questions for Mr. Loyer, but if
11 the Committee has some questions --

12 PRESIDING MEMBER BOYD: Yes, we do.

13 HEARING OFFICER WILLIS: We do. Yes,
14 we'd like to have him sworn in, please.

15 MR. FRESCH: Joe, they want to swear you
16 in.

17 MR. LOYER: Okey-dokey.

18 (Laughter.)

19 PRESIDING MEMBER BOYD: Raise your right
20 hand.

21 Whereupon,

22 JOSEPH LOYER
23 was called as a witness herein, and after first
24 having been duly sworn, was examined and testified
25 as follows:

1 HEARING OFFICER WILLIS: There is no
2 direct, is that my understanding, Mr. Westerfield?

3 MR. WESTERFIELD: That's correct.

4 (Off-the-record comments.)

5 MR. FRESCH: Joe, are you still there?

6 MR. LOYER: I'm still here.

7 HEARING OFFICER WILLIS: We just moved
8 you closer to the dais.

9 MR. LOYER: Oh, okay.

10 HEARING OFFICER WILLIS: Mr. Fresch, do
11 you have any questions for this witness?

12 MR. FRESCH: The applicant doesn't have
13 any questions, thank you, Hearing Officer Willis.

14 HEARING OFFICER WILLIS: Thank you.

15 PRESIDING MEMBER BOYD: Joe, this is
16 Commissioner Boyd. On page C-3 of the staff's
17 addendum the first paragraph, at the bottom of the
18 first paragraph there's a sentence that's
19 confusing some of us up here.

20 It says, the District has lowered the
21 allocation of PM10 PRCs from 186 pounds per day to
22 162 pounds per day for offsetting the MSG project
23 PM10's emission impact.

24 And for the life of me, and perhaps
25 others of us, we could not find the 186 pounds per

1 day. Can you explain that number?

2 MR. LOYER: The 186 pounds per day was a
3 number that was originally generated with the
4 preliminary determination of compliance that the
5 District did issue.

6 HEARING OFFICER GEFTER: What does it
7 say now?

8 PRESIDING MEMBER BOYD: So I guess the
9 question in our mind is how did we get from 186 to
10 162?

11 MR. LOYER: We got there because the
12 applicant revised their PM10 emission numbers.

13 PRESIDING MEMBER BOYD: Okay. That
14 statement I understand, but it certainly wasn't
15 clear from this sentence. Thank you.

16 Okay, we need the applicant to attest to
17 that.

18 MR. FRESCH: Commissioner Boyd, the
19 applicant can respond to that question if you'd
20 like.

21 HEARING OFFICER WILLIS: If we could
22 have Dr. Nand respond, please.

23 DR. NAND: What Joe Loyer is saying is
24 correct. The first time when we submitted our
25 permit application the SO2 emissions were

1 calculated by the District at full-term operation
2 like 8760 hours per year.

3 And we had pointed out actually that,
4 you know, this machine cannot operate, this
5 combustion turbine generator, 8760 hours per hour
6 (sic). So the emissions were reduced accordingly.

7 So the difference what you are seeing,
8 which is 186 and 162 reflects that difference.

9 HEARING OFFICER WILLIS: Mr. Loyer, are
10 you there?

11 MR. LOYER: Yes, I am.

12 HEARING OFFICER WILLIS: This is Kerry.
13 I have a question for you. I guess we're having a
14 little confusion on the numbers that the staff
15 developed versus the numbers that the District
16 came up for liability.

17 And it is stated several times that the
18 applicant's numbers are for CEQA purposes, but not
19 reflecting the NSR requirements, offset
20 requirements.

21 For example, for table 10 you have PM10
22 facility total, expected daily emissions of
23 164.28. Yet the applicant is required to offset
24 162 pounds per day. Is that correct?

25 MR. LOYER: I didn't quite follow all of

1 that. I'm looking at table 10, we're looking at
2 which PM10?

3 HEARING OFFICER WILLIS: Right. PM10,
4 it said 164.28 for the facility total?

5 MR. LOYER: Yes, that's correct.

6 HEARING OFFICER WILLIS: Okay, and then
7 we go back over to C-3, and the District has
8 lowered the allocation from 186 to 162. Maybe you
9 can explain why there is differences, and if
10 there's -- I noticed back in I guess it's table 1
11 on A-4, it looks like that table reflects the
12 District's calculations of emissions, but it's not
13 actually labeled as such.

14 So maybe you can explain those
15 differences?

16 MR. LOYER: I think what you're asking
17 me to do is to explain the difference between the
18 calculations that staff uses and that which the
19 District uses to determine what is the emission
20 liability for the applicant, is that correct?

21 HEARING OFFICER WILLIS: That sounds
22 correct.

23 MR. LOYER: Essentially what the
24 District does is they use a 30-day averaging
25 period or calculation method. They average the

1 total emissions in what is to be, what in many
2 cases is the highest month for emissions. In the
3 case of Vernon City it doesn't matter which month
4 you pick, because they will be baseloaded
5 throughout the year.

6 But what the District does is they total
7 up the expected emissions for the month, including
8 startups and shutdowns, and periods of inactivity,
9 if that wants to be accounted for by the
10 applicant. And they total that up and then they
11 essentially divide that by 30 or divide that by
12 the number of days in a month. I believe it's
13 30. And that gives them a pounds-per-day
14 number.

15 As you can expect, in many instances
16 staff does not make their calculation the same
17 way. Our pounds-per-day number is going to be
18 slightly different than that of the District's, in
19 that we will account for, or want to present what
20 we feel is the most reasonable worst case
21 operational scenario, which may include a startup
22 during the day, which would have excessive NOx and
23 CO emission numbers, but perhaps lower SOx and VOC
24 and PM10 numbers.

25 In this particular instance the hourly

1 emissions and the monthly -- or the daily
2 emissions are going to be closer to the District's
3 calculations because we're taking into
4 consideration that this is, in fact, a baseloaded
5 unit and not a unit that is going to possibly
6 operate other than baseload, maybe even more
7 towards load following or peaking.

8 So in that particular instance we felt
9 it reasonable to average in the startups and
10 shutdowns during the month.

11 And in a nutshell there's going to be a
12 slight difference between the way that staff ends
13 up with a project emission liability and the
14 difference -- and from what the District will end
15 up with a project liability.

16 HEARING OFFICER WILLIS: Do you have
17 table 1 in front of you.

18 MR. LOYER: Table 1?

19 HEARING OFFICER WILLIS: It's on page A-
20 4.

21 MR. LOYER: Is this in the original
22 assessment?

23 HEARING OFFICER WILLIS: This is in the
24 latest filed February 4th addendum.

25 MR. LOYER: What was the page number,

1 again?

2 HEARING OFFICER WILLIS: A-4.

3 MR. LOYER: A-4, okay. A-4, oh, here it
4 is.

5 HEARING OFFICER WILLIS: By looking at
6 that table can you tell me if that represents the
7 District's calculations?

8 MR. LOYER: Let's see -- this looks
9 like, yeah, this looks more closely to the
10 District's calculation methodology. The results
11 do, anyway.

12 Actually, is Krishna Nand there?
13 Because he did put this table together. And he
14 can speak to whether he pulled that from the
15 District calculation methodology or not. I
16 believe it is.

17 HEARING OFFICER WILLIS: Okay, thank
18 you. I'd like to refer you to page C-3, the
19 third, that big full long paragraph.

20 MR. LOYER: C-3, okay.

21 HEARING OFFICER WILLIS: I guess this is
22 part of our confusion. It says, the emission
23 liability presented in air quality tables 25,
24 amended, have been calculated for the purposes of
25 demonstrating mitigation efforts pursuant to staff

1 application of CEQA, and do not necessarily
2 reflect the District's NSR offset requirements.

3 We're kind of confused. We thought
4 that's what they were reflecting, the NSR
5 requirements. And if not, then what are the CEQA
6 requirements and --

7 MR. LOYER: CEQA requires that the
8 project not cause an environmental impact.

9 HEARING OFFICER WILLIS: I'm asking, I
10 guess, specifically then for the offset
11 requirements that would comply with CEQA if this
12 isn't reflective. I guess that sentence isn't
13 making much sense to us, and we're just kind of
14 trying to find out.

15 It appears that the NSR requirements
16 would make the project in compliance with CEQA, is
17 that correct?

18 MR. LOYER: NSR offsets are generally
19 compliant with CEQA. But then the sentence is
20 essentially identifying the liability calculation,
21 and not the NSR offset requirements for offset
22 mitigation proposed.

23 HEARING OFFICER WILLIS: Well, the
24 following sentence you say that rather they
25 represent excess or shortfall mitigation required

1 for CEQA compliance purposes only.

2 So I guess my question is then what is
3 the requirement for CEQA if these offsets are only
4 for compliance purposes for CEQA, and not for NSR.

5 MR. LOYER: The offsets are not -- let
6 me see, could you repeat that? I don't think I
7 quite understood you.

8 HEARING OFFICER WILLIS: If you follow
9 that second sentence below the bold.

10 MR. LOYER: Yes.

11 HEARING OFFICER WILLIS: And if you read
12 that it says the excess or shortfall of NSR --
13 let's see, they do not represent excess or
14 shortfall of NSR offsets.

15 MR. LOYER: Correct.

16 HEARING OFFICER WILLIS: But they're
17 excess or shortfall mitigation required for CEQA
18 compliance purposes only.

19 And I guess we're confused on -- it
20 looks like they are requirements for NSR offsets,
21 because we just had the District discuss that.

22 MR. LOYER: The requirements for NSR
23 offsets are contained specifically within the
24 District's PDOC and FDOC documentation.

25 What this table reflects is --

1 HEARING OFFICER WILLIS: And what --

2 MR. LOYER: -- the calculations --

3 HEARING OFFICER WILLIS: -- table --

4 MR. LOYER: -- of daily and annual
5 liability that the project emissions, that we feel
6 the project emissions has, compared to that
7 mitigation that is surrendered through the NSR
8 program at the District.

9 Now, given that, this is only a
10 demonstration of how the project has complied with
11 CEQA requirements. This is not a demonstration of
12 whether or not the NSR requirement, through the
13 District process, result in a massive excess of
14 mitigation or a shortfall of mitigation.

15 HEARING OFFICER WILLIS: Yeah, I guess
16 the question is what does the excess column refer
17 to then?

18 MR. LOYER: It refers to the amount of
19 mitigation that is in excess of what is necessary
20 for CEQA purposes.

21 HEARING OFFICER WILLIS: Joe, can you
22 hold on for a minute. We do have the District
23 representative here, who'd like to address that.

24 MR. NAZEMI: Thank you. I want to
25 actually come to staff's defense here. This staff

1 assessment was previously written exactly as you
2 were requesting staff to demonstrate this. And we
3 made an objection to that, and asked staff to
4 change that. So maybe we should explain why we
5 did that.

6 As Mr. Loyer was explaining, the
7 methodology that is used in new source review is
8 very specific to the rule language. For example,
9 for pollutants we would require emissions to be
10 offset on a daily basis, but the calculation looks
11 at the maximum monthly emissions and divided by 30
12 will give us what the daily emissions are.

13 So, as you correctly pointed out in
14 table 10, the amount of daily emissions that's
15 calculated for staff's purposes are actually
16 higher than what the emissions offset liability
17 under new source review is because the applicant
18 has accepted a limit on their total monthly
19 emissions of PM10, considering that they will not
20 be running 24 hours a day every day of the month.

21 And therefore, when you divide that by
22 30, you get a smaller number than if you look at
23 the actual day of operation where they may have
24 one day that is higher than another day.

25 So the staff's estimation for daily are

1 actually higher than what we have estimated for
2 offsets liability on a daily basis.

3 However, on the same token, on an annual
4 basis, because we don't then, under new source
5 review, consider months that they operate at lower
6 levels, we take one month times 12. Then the
7 annual offsets that has been provided are actually
8 more than what the actual emissions are going to
9 be under calculations for CEQA purposes.

10 So, maybe Ms. Gefter's request, by
11 providing a table that shows actual offsets for
12 new source review purposes if a good idea. And
13 the District, rather than the applicant, will
14 provide that directly to the staff and the
15 Commissioners, so that it shows under new source
16 review what the offsets liabilities and amounts
17 that have been provided are.

18 But what you see here is actually
19 something we asked, because the previous
20 representation we felt that was actually a little
21 misleading. Because it showed under new source
22 review there were excess offsets provided. And
23 our new source review calculations and our rules
24 do not actually require excess offsets. They only
25 require what's required under our rules. So we

1 asked them to change that.

2 HEARING OFFICER GEFTER: Mr. Nazemi,
3 looking at tables 25 and 26, there is a column
4 that lists mitigation. And that's why the
5 Committee is confused, because staff is claiming
6 these are not -- this is not excess mitigation in
7 terms of the District's requirements. Is it
8 excess mitigation then for what purpose? I mean
9 is it for CEQA?

10 MR. NAZEMI: I believe -- I'm not the
11 expert in the CEC process, but I believe under the
12 AFC certification staff has to identify
13 environmental impacts and whether they're
14 significant or not. And if they're significant,
15 whether they're mitigated or not.

16 And this, I presume, is addressing
17 whether there are mitigations provided for all
18 emissions from this project. Not necessarily how
19 a District may calculate those emissions under
20 their new source review program.

21 HEARING OFFICER GEFTER: Right, but when
22 you testified earlier when you looked at the
23 numbers here and you told us that, you know, the
24 SOx is calculated at 1.1 ratio, and so we did the
25 numbers here. And then we came up with a daily

1 emission level of SOx at 7.0. And that there
2 would be no excess mitigation on a daily basis.

3 And so I think what is happening here is
4 that these concepts are being integrated into one
5 table, and it's confusing to the Committee.

6 MR. NAZEMI: I apologize if I created
7 some of this confusion. But I did want to point
8 out in tables 25 and 26 that the District
9 mitigation column was showing that the District is
10 providing certain amounts of offsets on a pounds-
11 per-day and pounds-per-year for sulfur oxides from
12 our internal account. And I wanted to correct
13 those numbers.

14 Now how those are used towards the
15 actual project emissions to determine whether
16 they're excess or not, for the purposes of CEQA, I
17 think that's really staff's analysis, not
18 District's analysis. We only look at it from our
19 new source review perspective, which we'll be
20 happy to provide you a table that explains that.

21 HEARING OFFICER GEFTER: Basically then
22 what you were testifying to was just with respect
23 to the District mitigation requirements and those
24 numbers?

25 MR. NAZEMI: That's correct, the amounts

1 that the District has provided from our mitigation
2 program.

3 PRESIDING MEMBER BOYD: Well, and that's
4 to meet the requirements, Mozen, of both state and
5 federal law, correct?

6 MR. NAZEMI: That's correct. Actually,
7 like I said, we go beyond the requirement of both
8 federal and state for SOx, because neither
9 requirements is in either state or federal law.

10 PRESIDING MEMBER BOYD: Thank you.

11 HEARING OFFICER GEFTER: I have a
12 question for Mr. Loyer, and this is just to
13 clarify a number, again, on page C-3. Is Mr.
14 Loyer on the phone? Mr. Loyer, are you still
15 there?

16 MR. FRESCH: Joe, are you there?

17 (Laughter.)

18 MR. LOYER: Yeah, I'm still here.

19 HEARING OFFICER GEFTER: Okay.

20 MR. LOYER: Every once in awhile I hear
21 a little voice that's very faint, and then all of
22 a sudden his comes through like a loudspeaker.

23 (Laughter.)

24 COMMISSIONER PERNELL: It's a different
25 voice.

1 HEARING OFFICER GEFTER: Joe, on page --
2 Mr. Loyer, on page C-3, --

3 MR. LOYER: Yes.

4 HEARING OFFICER GEFTER: -- there is a
5 reference to pounds per day of SO₂, and in staff's
6 assessment you have 8.66 pounds per day. That's
7 the second paragraph.

8 MR. LOYER: That's correct.

9 HEARING OFFICER GEFTER: And the
10 District has indicated that their calculation is
11 there, it's 7.0 pounds per day.

12 So, where does the 8.66 come from?

13 MR. LOYER: That would be my estimate of
14 what I believe the District should have given, but
15 I believe 7.0 will be good enough.

16 HEARING OFFICER GEFTER: Could you
17 explain in the tables 25 and 26 when the column
18 that refers to excess mitigation, what does that
19 refer to and how does that apply to CEQA?

20 MR. LOYER: The basis for tables 25 and
21 26 is to compare the project liability, that would
22 be in the second column under, you know,
23 liability, comparing that to the total of the
24 columns dealing with offset and District
25 mitigation. And those resulting in an excess of

1 mitigation in this particular case.

2 Essentially what you need to know is
3 that the liability is a calculation that the
4 Energy Commission Staff, in this case myself, make
5 on the project, what we believe to be the
6 project's emission liabilities on a daily and
7 annual basis.

8 The offset is the offsets that the
9 applicant has purchased or procured through 1309.1
10 in this particular case from the priority reserve.
11 And they are represented at a one-to-one ratio,
12 offset ratio. Whereas in the District's case they
13 would offset at a 1.2-to-1 ratio per the federal
14 rules and regulations.

15 The District's mitigation column are the
16 emissions -- the mitigation the District would
17 provide through their District account at a 1.2-
18 to-1 ratio.

19 So that we end up, when we represent
20 those here at a one-to-one ratio, so that you end
21 up with -- you can't help but end up with a
22 tremendous amount of excess mitigation.

23 What the two tables are intended to
24 demonstrate, beyond any shadow of a doubt, is that
25 even though the staff includes more emissions,

1 primarily in this case from the cooling tower,
2 even though we include more emissions from the
3 project than what the District does, we believe
4 that the project is fully mitigated, mitigated
5 beyond what would be necessary if you were just to
6 do a CEQA-only analysis.

7 Doing the NSR analysis we find that the
8 District has provided, through their NSR program,
9 full mitigation for the project, as well.

10 HEARING OFFICER WILLIS: Thank you, Joe.
11 We'd like to refer to some of the air quality
12 conditions for just a moment. Do you have those
13 in front of you, Mr. Loyer?

14 MR. LOYER: I have what in front of me?

15 HEARING OFFICER WILLIS: The air quality
16 conditions, the latest filed.

17 MR. LOYER: Yes.

18 HEARING OFFICER WILLIS: I want to turn
19 first to air quality-27.

20 MR. LOYER: AQ-27?

21 HEARING OFFICER WILLIS: Right.

22 MR. LOYER: Okay.

23 HEARING OFFICER WILLIS: Okay, in that
24 condition it basically has the purpose of the
25 condition is to insure that the total PM10

1 emissions shall not exceed. Do you see that
2 sentence? It's just the second complete sentence
3 on that condition.

4 MR. LOYER: Air quality-27?

5 HEARING OFFICER WILLIS: Right, AQ-27.
6 It should have a big bold paragraph in front of
7 it, right -- and do you see that condition?

8 MR. LOYER: I can't hear you.

9 HEARING OFFICER WILLIS: Do you see the
10 condition?

11 MR. LOYER: Yes.

12 HEARING OFFICER WILLIS: Okay. That
13 condition, generally we do not include the purpose
14 of the condition, so that condition would need to
15 be rewritten, probably just the total of PM10
16 emissions shall not exceed.

17 MR. LOYER: Unless there is, this
18 language specifically find it, you know,
19 untenable, this is, I believe, the specific
20 language that the District has used. And we would
21 prefer to keep it as is just to make sure that
22 there is no confusion between our version of this
23 condition and the District's version of the
24 condition.

25 We can certainly change it. It doesn't

1 have to be verbatim. But, unless -- if you truly
2 desire, we can modify the condition.

3 HEARING OFFICER WILLIS: Thank you. The
4 condition will be modified to just start with, and
5 leave out the section on the purpose of.

6 MR. LOYER: I didn't quite catch that?

7 HEARING OFFICER WILLIS: We will -- the
8 condition should be modified to take out that
9 first part of that sentence.

10 MR. LOYER: The second --

11 HEARING OFFICER WILLIS: Right.

12 MR. LOYER: -- the purpose of this
13 condition?

14 HEARING OFFICER WILLIS: Right, the
15 purpose of the condition. There's also a few of
16 the verifications I've noticed AQC-8, for example,
17 doesn't say where the -- it says the City of
18 Vernon shall submit for approval. It doesn't
19 mention to whom. So the CPM would need to be
20 included.

21 And there were a few of those in here
22 that I found. So, you may not -- want to go
23 through the conditions and just verify that the
24 CPM is listed under the verification portion.

25 MR. LOYER: Very well.

1 HEARING OFFICER WILLIS: Can you refer
2 to AQC-14, please.

3 MR. LOYER: All right.

4 HEARING OFFICER WILLIS: I think there
5 was some confusion. This was regarding the
6 oxidation catalyst.

7 MR. LOYER: Yes.

8 HEARING OFFICER WILLIS: And the last --
9 it's kind of a long verification, but probably
10 needs to be broken out into separate sections.
11 But the very bottom says, the City of Vernon shall
12 notify the CPM of the date of the intended
13 oxidation catalyst replacement, if necessary, at
14 least 30 days prior to replacement.

15 Was that at the beginning of operation?

16 MR. LOYER: That is the most likely
17 point in which the oxidation catalyst would be
18 replaced with this particular use in mind.

19 HEARING OFFICER WILLIS: Can you put
20 language into the verification to indicate that?

21 MR. LOYER: Thirty days prior to --
22 well, if they absolutely have to replace this
23 prior to that point I would rather leave it open
24 to the point of whenever they feel that they need
25 to replace the oxidation catalyst.

1 HEARING OFFICER WILLIS: Will they
2 replace it before operation?

3 MR. LOYER: They can, if necessary. If
4 they feel it's not necessary and they feel that
5 they are getting adequate operation out of the
6 catalyst, I don't see a compelling reason that
7 they should be forced to replace it.

8 HEARING OFFICER WILLIS: I'd like to
9 refer to the applicant.

10 MR. FRESCH: The applicant would like to
11 have Dr. -- Ramon Abueg, Project Manager, answer
12 that.

13 HEARING OFFICER WILLIS: Thank you.

14 MR. ABUEG: To the extent that we need
15 to replace the catalyst we will do that, but what
16 we intend to do before we go into commercial
17 operation, we intend to check or test the catalyst
18 and see how it functions.

19 Those catalysts are not inexpensive.
20 They're about \$300,000 each. We will have a new
21 on onsite; and if we need it we will notify the
22 CPM right before we replace it.

23 HEARING OFFICER WILLIS: Mr. Abueg, how
24 often would you -- do you test at regular
25 intervals or how would you know that you need to

1 replace it, at what point in time?

2 MR. ABUEG: Yeah, we --

3 MR. LOYER: Is that to me?

4 HEARING OFFICER WILLIS: I'm sorry, no;
5 this is to the applicant.

6 MR. ABUEG: We will have what's called a
7 continuous emission monitoring system that will
8 continuously monitor the output out of the stack.
9 We will know through the testing, through the --
10 when it's time to test or replace the equipment.

11 HEARING OFFICER WILLIS: Is there a
12 requirement by the District that you have the
13 catalyst on during operation?

14 MR. FRESCH: The applicant would like
15 Dr. Krishna Nand to answer that question.

16 DR. NAND: My answer is in two parts.
17 The first part is that we have made a decision to
18 install the CO catalyst during the commissioning
19 period, which is not required by the South Coast
20 AQMD rules and regulations, to reduce the cost of
21 the offset.

22 And as Ramon explained, that these
23 machines will be installed with a continuous
24 emission monitoring system. And they will tell us
25 what are the emissions we are getting from the

1 stacks.

2 And if we feel that the emissions are
3 going to exceed the limits what we have from South
4 Coast AQMD, we will immediately replace the
5 catalyst.

6 And as Ramon mentioned, the catalyst
7 will be at the site, which we'll have bought it;
8 if need be, then we'll replace it.

9 HEARING OFFICER WILLIS: Just kind of
10 the short answer, is that a requirement by the
11 District to have it on, the catalyst on during the
12 operation?

13 DR. NAND: Yes. The normal operation it
14 is a requirement because we cannot meet the
15 emission limit of 2 parts per million unless we
16 have the catalyst. So, during normal operation
17 that's a requirement.

18 And for the commissioning phase we have
19 made this addition, and all our emission
20 calculations are based on with the catalyst. So,
21 it will be required.

22 HEARING OFFICER WILLIS: Thank you. And
23 also back to the applicant. We just want to refer
24 you to AQ-15 that does limit the operation of the
25 diesel fuel emergency backup generators. And it

1 is in part of the air quality conditions, although
2 you had mentioned it wasn't part of the project.
3 It is part of the conditions of the project.

4 MR. FRESCH: The applicant will have
5 Ramon Abueg answer that.

6 MR. ABUEG: It is not part of the
7 project, however I believe the District, as well
8 as staff, we want to make sure that we do not use
9 those generators for anything than what it's
10 designated to be used right now, which are
11 emergency units.

12 MR. FRESCH: The applicant has a
13 question regarding the revisions to tables 25 and
14 26, which were originally specified for applicant
15 to do. But then the District has now said they
16 would do it.

17 The applicant really has a question of
18 the District of when that would occur, if that's
19 something that needs be done.

20 HEARING OFFICER GEFTER: I don't believe
21 that we asked the District to revise 25 and 26.
22 We've asked for a new table which lists all the
23 offsets that would then bring the project into
24 compliance with the District's requirements.

25 MR. FRESCH: Okay. Applicant's question

1 is really when that could be completed.

2 MR. NAZEMI: This is Mozen Nazemi. We
3 can provide that to the Energy Commission by
4 Wednesday of this week.

5 HEARING OFFICER WILLIS: Thank you very
6 much.

7 MR. FRESCH: Thank you.

8 HEARING OFFICER WILLIS: So that would
9 be February 12th?

10 MR. NAZEMI: Yes.

11 HEARING OFFICER WILLIS: Thank you.

12 HEARING OFFICER GEFTER: Mr. Nazemi,
13 while we have you here I do want to get back to
14 the Air District's conditions that have been
15 incorporated into staff's proposed conditions of
16 certification.

17 Is there a specific condition that talks
18 about the oxidation catalyst, that requires the
19 applicant to have it installed during operation?
20 Is there a specific condition?

21 You can come back to us later with that.

22 MR. NAZEMI: Ms. Gefter, the requirement
23 for oxidation catalyst is actually incorporated
24 into the permit emissions limit that reflect it as
25 2 parts per million. And as the applicant stated,

1 that the gas turbine, without use of any oxidation
2 catalyst, cannot meet the 2 parts per million
3 emissions limit. Therefore it's, I guess, the
4 presumption that they will have to use in order to
5 meet that.

6 And since there's a continuous emission
7 monitor that measures the CO emissions at the
8 stack at all times, then it's, I think, unwise for
9 the applicant not to use the catalyst because
10 they'll be in violation.

11 However, we will incorporate a new
12 condition consistent with whatever language the
13 Energy Commission puts into their certification
14 for the use of an oxidation catalyst during the
15 commissioning period as one of our Title 5 permit.

16 HEARING OFFICER GEFTER: Thank you. And
17 also with respect to the applicant's testimony
18 that continuous emission monitor would be
19 constantly testing to make sure that the catalyst
20 is operating properly during commissioning and
21 would indicate whether a new one needs to be
22 installed at the conclusion of commissioning, is
23 the CEM actually installed and operating during
24 the commissioning period?

25 MR. NAZEMI: I'm not certain exactly

1 when the unit is going to be in place. However,
2 the continuous emission monitors, by themselves,
3 cannot give you the information.

4 The way that you can verify that the
5 information is accurate is after the installation
6 they have to go through a series of tests to
7 certify that the monitor actually reads the
8 correct concentration.

9 And the certification process usually
10 takes a few months before it can be finalized.
11 They have to do a series of tests. So I guess I'm
12 not exactly sure when the unit will be in place,
13 but it will have to be certified before those
14 numbers are accepted. And we typically have a
15 180-day window for doing all the tests and
16 certifications.

17 So my guess, if you want to know exactly
18 when, I guess within the first six months that
19 unit will have to be certified and the numbers be
20 reviewed for purposes of compliance.

21 HEARING OFFICER WILLIS: I think that's
22 going to conclude the air quality section. Thank
23 you very much for coming.

24 I'd like to turn to Mr. Westerfield to
25 see if there's any final questions you have for

1 your witness?

2 MR. WESTERFIELD: Well, Ms. Willis, he's
3 not our witness. We did not --

4 HEARING OFFICER WILLIS: I meant Mr.
5 Loyer on the phone.

6 MR. WESTERFIELD: Oh, --

7 MR. LOYER: Sorry, I --

8 HEARING OFFICER WILLIS: He is your
9 witness.

10 MR. WESTERFIELD: I didn't know who you
11 were referring to, I thought --

12 HEARING OFFICER WILLIS: I'm sorry.

13 MR. WESTERFIELD: No, we have no
14 questions.

15 HEARING OFFICER WILLIS: Okay, thank
16 you, Mr. Loyer.

17 MR. LOYER: I'm sorry, what?

18 HEARING OFFICER WILLIS: Thank you.
19 You're excused.

20 MR. LOYER: Very good, thank you.

21 HEARING OFFICER WILLIS: Okay. For
22 housekeeping purposes I'd like to have, if staff -
23 - since the letter from the Air District is
24 addressed to Mr. Richins, I would like to mark
25 that as exhibit 39.

1 And if staff would like to move that
2 into the record, as well as the FDOC?

3 MR. WESTERFIELD: Yes, staff would like
4 to move exhibit 39 into the record, as well as
5 those portions of exhibit 34, 35, 36 and 37
6 related to air quality.

7 HEARING OFFICER WILLIS: Are there any
8 objections?

9 MR. FRESCH: Applicant has no
10 objections.

11 HEARING OFFICER WILLIS: And did that
12 include exhibit 37, the FDOC?

13 MR. WESTERFIELD: Yes.

14 HEARING OFFICER WILLIS: So moved. And
15 at that point we'll move on to public health.

16 (Pause.)

17 HEARING OFFICER WILLIS: Okay, at this
18 time I'd like to turn to applicant if you have any
19 direct testimony for public health.

20 MR. FRESCH: At this time the applicant
21 has no direct testimony for public health. We
22 propose to submit by declaration in that technical
23 area. And what the applicant would propose is
24 with respect to that portion of exhibit 38 that
25 contains the declaration, our prior submitted

1 testimony as an addition to exhibits 1, 3, 4, 8
2 and 28. We would respectfully request that that
3 be moved into the record.

4 HEARING OFFICER WILLIS: Are there any
5 objections?

6 MR. WESTERFIELD: No objections.

7 HEARING OFFICER WILLIS: Okay, so moved.
8 Staff?

9 MR. WESTERFIELD: Yes, we would like to
10 have Mr. Pfanner now make a brief -- give brief
11 testimony on a new public health condition that we
12 have added.

13 HEARING OFFICER WILLIS: Thank you.

14 MR. PFANNER: After the prehearing
15 conference was conducted on January 9th, a new
16 issue was identified by technical staff regarding
17 the use of reclaimed water for cooling and the
18 need of an additional LORS section and condition
19 in the public health testimony of the staff
20 assessment.

21 So in appendix E of the public health
22 section we have provided additional testimony to
23 be added to public health section of the staff
24 assessment. This includes the addition of
25 condition public health-1 to insure compliance

1 with LORS involving the California Code
2 regulations, Title 22, section 60306, regarding
3 the use of reclaimed water in conjunction with air
4 cooling towers.

5 And this new condition has been reviewed
6 and agreed to by the City of Vernon. We do have
7 Mike Ringer available if there are any questions
8 on this topic.

9 COMMISSIONER PERNELL: No questions.

10 PRESIDING MEMBER BOYD: No questions.

11 HEARING OFFICER WILLIS: Is there any
12 questions from the applicant?

13 MR. FRESCH: The applicant has no
14 questions.

15 HEARING OFFICER WILLIS: The Committee
16 does not have any questions for that witness. Mr.
17 Ringer?

18 PRESIDING MEMBER BOYD: Mike? Do your
19 good job.

20 MR. FRESCH: Mike, are you there?

21 MR. RINGER: Yeah, I'm here.

22 HEARING OFFICER WILLIS: Mike, we just
23 closed the topic of public health, so you are
24 excused.

25 MR. RINGER: I was listening and didn't

1 hear much, so --

2 HEARING OFFICER WILLIS: Okay.

3 MR. RINGER: -- I assumed that you guys
4 said okay.

5 HEARING OFFICER WILLIS: Before we close
6 the topic we just wanted to verify with the
7 applicant that they do agree to the new condition.

8 MR. FRESCH: The applicant does agree to
9 the new condition. And if the applicant could, it
10 would like to add one more exhibit to be accepted
11 into the record in this section. We neglected to
12 say exhibit 7. We'd respectfully request that be
13 moved into the record, also.

14 HEARING OFFICER WILLIS: Any objections?
15 Staff?

16 MR. WESTERFIELD: No objections.

17 HEARING OFFICER WILLIS: Thank you.
18 Okay, Mr. Ringer, you are free to go.

19 MR. RINGER: Okay, that's the only part
20 I heard, and I guess that's the most important
21 part.

22 (Laughter.)

23 HEARING OFFICER WILLIS: Thank you for
24 your patience.

25 MR. RINGER: Thank you.

1 MR. WESTERFIELD: Hearing Officer
2 Willis, before we close the subject of public
3 health we would like to move portions of certain
4 exhibits into the record.

5 HEARING OFFICER WILLIS: That is a very
6 good idea, thank you.

7 MR. WESTERFIELD: We would like to move
8 those portions of exhibits 34, 35, 36, and 37
9 dealing with public health into the record at this
10 point.

11 HEARING OFFICER WILLIS: Any objection?

12 MR. FRESCH: The applicant has no
13 objection.

14 HEARING OFFICER WILLIS: Thank you. So
15 moved.

16 Okay, at this time why don't we start
17 with alternatives. I guess we'll start with the
18 applicant.

19 MR. FRESCH: At this time the applicant
20 proposes to submit alternatives by declaration.
21 The declaration and testimony previously filed
22 contained in portions of exhibit number 38, as
23 well as exhibit 1 that supports this technical
24 area. The applicant respectfully requests that
25 those exhibits be accepted into the record.

1 HEARING OFFICER WILLIS: Are there any
2 objections?

3 MR. WESTERFIELD: No objections.

4 HEARING OFFICER WILLIS: Okay, so moved.
5 Staff?

6 MR. WESTERFIELD: We're offering no
7 testimony, but would like to offer those portions
8 of the staff assessment addendum and final
9 addendum into the record as part of alternatives.

10 HEARING OFFICER WILLIS: Any objections?

11 MR. FRESCH: Applicant has no
12 objections.

13 HEARING OFFICER WILLIS: All right.
14 We'll move on to facility design. Applicant.

15 MR. FRESCH: The applicant proposed to
16 submit facility design by declaration. Portions
17 of previously submitted testimony are found in
18 exhibit 38. The applicant respectfully requests
19 that exhibit 38 and portions of exhibit 1
20 supporting that technical area be moved into the
21 record.

22 HEARING OFFICER WILLIS: Staff, any
23 objection?

24 MR. WESTERFIELD: No objections.

25 HEARING OFFICER WILLIS: Okay, so moved.

1 Staff?

2 MR. WESTERFIELD: Staff is also offering
3 its written testimony by declaration on this
4 subject. And would like to move the appropriate
5 parts of exhibits 34 through 37 into the record.

6 HEARING OFFICER WILLIS: Applicant, any
7 objection?

8 MR. FRESCH: The applicant has no
9 objections.

10 HEARING OFFICER WILLIS: Okay, so moved.
11 Next topic, power plant reliability.

12 MR. FRESCH: The applicant proposes to
13 submit power plant reliability into the record by
14 declaration. Portions of exhibit 38 and exhibit 1
15 we respectfully request be moved into the record.

16 HEARING OFFICER WILLIS: Any objection?

17 MR. WESTERFIELD: No objections.

18 HEARING OFFICER WILLIS: Okay, so moved.
19 Mr. Westerfield.

20 MR. WESTERFIELD: Staff respectfully
21 requests to do likewise; and moves appropriate
22 sections of exhibits 34 through 37 into the
23 record.

24 MR. FRESCH: Applicant has no
25 objections.

1 HEARING OFFICER WILLIS: Thank you, so
2 moved.

3 MR. FRESCH: Applicant proposes to move
4 power plant efficiency into the record, previously
5 submitted testimony, by declaration, and portions
6 of exhibit number 38, as well as exhibit 1. We
7 respectfully request that be moved into the
8 record.

9 HEARING OFFICER WILLIS: Any objection?

10 MR. WESTERFIELD: No objections.

11 HEARING OFFICER WILLIS: So moved.
12 Staff?

13 MR. WESTERFIELD: Staff proposes to
14 submit by declaration the appropriate sections of
15 exhibits 34 through 37 on power plant efficiency.

16 MR. FRESCH: Applicant has no
17 objections.

18 HEARING OFFICER WILLIS: Thank you, so
19 moved.

20 MR. FRESCH: The applicant proposed to
21 move transmission system engineering into the
22 record. The applicant previously submitted
23 testimony by declaration, portions of exhibit
24 number 38, and request that those portions of 38,
25 as well as exhibits 1, 2, 3, 4, 20, 27 and 31 be

1 moved into the record.

2 HEARING OFFICER WILLIS: Any objection?

3 MR. WESTERFIELD: No objections.

4 HEARING OFFICER WILLIS: Okay, so moved.

5 Staff?

6 MR. WESTERFIELD: Staff proposes to do
7 likewise, to simply submit into evidence by
8 declaration; and move into evidence relevant
9 portions of exhibit 34 through 37.

10 HEARING OFFICER WILLIS: Any objection,
11 Mr. Fresch?

12 MR. FRESCH: No objections from
13 applicant.

14 HEARING OFFICER WILLIS: Okay, so moved.
15 Let's move on to transmission line safety and
16 nuisance. Mr. Fresch.

17 MR. FRESCH: Applicant proposes to
18 submit previously submitted testimony by
19 declaration on transmission line safety and
20 nuisance. And we propose to move into the record
21 portions of exhibit number 38 dealing with that
22 technical area.

23 MR. WESTERFIELD: No objections.

24 HEARING OFFICER WILLIS: So moved.

25 Staff.

1 MR. WESTERFIELD: We are also presenting
2 our evidence on declaration; and we propose to
3 move the appropriate sections of exhibits 34
4 through 37 into the record.

5 MR. FRESCH: Applicant has no
6 objections.

7 HEARING OFFICER WILLIS: Thank you, so
8 moved. And just one moment, please.

9 (Pause.)

10 HEARING OFFICER WILLIS: We've like to
11 move to cultural resources, and before we move the
12 exhibits the Committee had a question regarding
13 the historical resource Vernon A.

14 MR. FRESCH: Yes, Station A?

15 HEARING OFFICER WILLIS: Yes, if you
16 could have your witness address that?

17 MR. FRESCH: Sure, I will have the
18 Project Manager, Ramon Abueg, address that.

19 MR. ABUEG: With respect to the existing
20 building we are establishing a -- we're going to
21 establish a nonprofit organization to manage the
22 building, as well as the diesel plant as part of
23 historical preservation.

24 HEARING OFFICER WILLIS: Could you
25 explain further what will be happening with the

1 nonprofit organization you'll establish?

2 MR. ABUEG: The nonprofit organization
3 will be responsible for the maintenance of the
4 building. Basically to preserve it, keep it
5 intact.

6 HEARING OFFICER WILLIS: And what is the
7 timing on that?

8 MR. ABUEG: My lawyer advises me it's in
9 weeks.

10 PRESIDING MEMBER BOYD: Now I'd like to
11 seek some clarification. Do you mean while the
12 plant is still deemed operational there's still
13 going to be a nonprofit move in and take care of
14 the building, so to speak, and keep the building
15 in what, in repair?

16 MR. ABUEG: They will keep it --

17 PRESIDING MEMBER BOYD: I'm used to
18 things when they're finished, you know, being
19 phased off to a nonprofit group maybe to maintain
20 as a museum piece or a cultural item. Do I
21 understand you're going to start some kind of
22 transition process here while it's still an
23 operational facility?

24 MR. ABUEG: That is correct.

25 PRESIDING MEMBER BOYD: Interesting. I

1 don't think I care, but it's interesting.

2 HEARING OFFICER WILLIS: Another
3 question?

4 MR. GARCIA: Yeah, I have a follow-on
5 question to Mr. Boyd's question. And presumably
6 at some point in the distant future that facility
7 will wind up being closed. And I'm just kind of
8 curious as to who's going to be responsible for
9 that closure if you do have this nonprofit? Is it
10 going to be the City? Is it going to be the
11 nonprofit? How's that going to work?

12 MR. ABUEG: In this case the City is
13 still going to own the facility. The nonprofit
14 organization is just going to manage it. The City
15 will continue to be responsible for the facility.

16 MR. GARCIA: Thank you.

17 PRESIDING MEMBER BOYD: I'd like to ask
18 Mr. Pfanner, I don't have with me apparently the
19 cultural requirements. Can you review for us any
20 of the requirements with regard to the subject
21 we're discussing here?

22 MR. PFANNER: Yes, specifically cultural
23 resource condition 8, which you find in the staff
24 assessment on page 4.3-12. And it reads, project
25 owner shall insure that Station A is maintained in

1 accordance with the Secretary of the Interior's
2 standards for the treatment of historic
3 properties, code 1995. Project owner shall
4 provide a summary of maintenance activities
5 completed within each calendar year."

6 PRESIDING MEMBER BOYD: And that's fine
7 for the applicant?

8 MR. FRESCH: That's acceptable to the
9 applicant. It's the applicant's intent to
10 maintain the old art deco building and keep it
11 intact.

12 PRESIDING MEMBER BOYD: Okay.

13 HEARING OFFICER GEFTER: Mr. Pfanner,
14 what does code 1995 refer to?

15 MR. PFANNER: I believe that is the year
16 of the standards for treatment of historic
17 properties code.

18 HEARING OFFICER GEFTER: Could we get a
19 better citation for that?

20 MR. PFANNER: I would have to report
21 back in writing --

22 HEARING OFFICER GEFTER: Thank you.

23 MR. PFANNER: -- from our cultural
24 resources --

25 HEARING OFFICER GEFTER: That would be

1 fine.

2 COMMISSIONER PERNELL: This is a
3 question for staff. In your analysis on the
4 historical significance did you look at any
5 earthquake retrofit for the building?

6 MR. PFANNER: The cultural resource
7 staff people did not get into specifics of that
8 structure. I think the City might be able to
9 respond better to that topic than I can.

10 MR. FRESCH: The applicant will have
11 Ramon Abueg answer that question.

12 MR. ABUEG: As a result of the same
13 question that Commissioner Pernell asked from the
14 prehearing conference, we have requested the
15 building department to start the investigation
16 with respect to the structural condition of the
17 building and with respect to the latest seismic
18 codes. So we are starting that process.

19 We do not have an answer as to whether
20 or not it needs any retrofitting at this point.

21 COMMISSIONER PERNELL: So I would assume
22 there would be a report from the City on the
23 condition of the building and whether any
24 retrofitting?

25 MR. ABUEG: That is correct.

1 COMMISSIONER PERNELL: Could that
2 report, when it's done, be transmitted to the
3 Committee?

4 MR. ABUEG: Yes, it can.

5 COMMISSIONER PERNELL: Thank you. A
6 correction there. That would be to the compliance
7 manager for the facility, because this Committee
8 may or may not be around.

9 MR. FRESCH: All right, --

10 HEARING OFFICER WILLIS: That concludes
11 our questioning on cultural, if you'd like to move
12 your exhibits into evidence.

13 MR. FRESCH: At this time applicant
14 would propose to submit the technical area of
15 cultural resources by declaration testimony
16 previously submitted with respect to that area.
17 We propose to submit portions of exhibit 38 and
18 exhibit 1, 2, 3, 4 and 29 into the record.

19 HEARING OFFICER WILLIS: Any objection?

20 MR. WESTERFIELD: No objection.

21 HEARING OFFICER WILLIS: Okay, so moved.
22 Staff?

23 MR. WESTERFIELD: Staff proposes to
24 submit its evidence by declaration, as well. And
25 we'd like to move into the record the appropriate

1 sections of exhibits 34 through 37.

2 MR. FRESCH: No objection.

3 MR. WESTERFIELD: No, 34 through 36.

4 MR. FRESCH: No objections.

5 HEARING OFFICER WILLIS: So moved, thank
6 you.

7 At this time we'd like to take about a
8 five-minute break, and then we'll resume.

9 (Brief recess.)

10 HEARING OFFICER WILLIS: Back on the
11 record. Our next topic is geological and
12 paleontological resources. And I'd like to turn
13 to the applicant.

14 MR. FRESCH: Applicant proposes to
15 submit the technical area of geological and
16 paleontological resources by declaration. With
17 respect to exhibit number 38, certain portions of
18 that, as well as exhibits 1, 2, and 3. Applicant
19 respectfully requests to move those into the
20 record.

21 HEARING OFFICER WILLIS: Any objections?

22 MR. WESTERFIELD: No objections.

23 HEARING OFFICER WILLIS: So moved.

24 Staff?

25 MR. WESTERFIELD: Staff also intends to

1 submit by declaration into evidence on geological
2 and paleontological resources. We'd like to move
3 into the record the appropriate sections of
4 exhibits 34 through 36.

5 MR. FRESCH: And the applicant has no
6 objections to that.

7 HEARING OFFICER WILLIS: Thank you, so
8 moved. Hazardous materials, applicant?

9 MR. FRESCH: Applicant proposes to move
10 into the record by declaration evidence on the
11 technical area of hazardous materials. Applicant
12 proposes to move portions of exhibit number 38
13 that contains the declaration, and testimony
14 previously filed, as well as exhibit 1 into the
15 record.

16 HEARING OFFICER WILLIS: Any objection?

17 MR. WESTERFIELD: No objections.

18 HEARING OFFICER WILLIS: So moved.
19 Staff?

20 MR. WESTERFIELD: Staff's evidence is
21 also by declaration on this topic, and proposes to
22 move into the record appropriate sections of
23 exhibits 34 through 36.

24 MR. FRESCH: No objections.

25 HEARING OFFICER WILLIS: So moved. Next

1 topic waste management.

2 MR. FRESCH: Applicant proposes to
3 submit the technical area of waste management by
4 declaration. Applicant respectfully requests to
5 move portions of exhibit number 38, as well as
6 exhibit 1, into the record.

7 HEARING OFFICER WILLIS: Any objection?

8 MR. WESTERFIELD: No objections.

9 HEARING OFFICER WILLIS: So moved.
10 Staff?

11 MR. WESTERFIELD: Staff also submits its
12 evidence by declaration, and would like to move
13 into the record appropriate sections of exhibits
14 34 through 36.

15 MR. FRESCH: No objection.

16 HEARING OFFICER WILLIS: Thank you, so
17 moved. Next topic is traffic and transportation.
18 Mr. Fresch.

19 MR. FRESCH: Applicant proposes to
20 submit for the technical area of traffic and
21 transportation into the record by declaration.
22 Applicant respectfully requests to move into the
23 record portions of exhibit number 38 and exhibit
24 1, 2, 3, and 10 into the record.

25 HEARING OFFICER WILLIS: Has staff any

1 objection?

2 MR. WESTERFIELD: No objections.

3 HEARING OFFICER WILLIS: So moved.

4 Staff?

5 MR. WESTERFIELD: Staff's evidence is
6 also by declaration on this topic. We'd like to
7 move into the record appropriate sections of
8 exhibits 34 through 36.

9 HEARING OFFICER WILLIS: And, Mr.
10 Fresch, any objection?

11 MR. FRESCH: No objections.

12 HEARING OFFICER WILLIS: So moved.

13 MR. FRESCH: Excuse me, there's one
14 other exhibit that I neglected to request under
15 traffic and transportation, if I could please move
16 in a --

17 HEARING OFFICER WILLIS: Sure.

18 MR. FRESCH: -- portion of exhibit
19 number 4 into the record in regards to the
20 technical area of traffic and transportation.

21 HEARING OFFICER WILLIS: Thank you.
22 Staff, any objection?

23 MR. WESTERFIELD: No objection.

24 HEARING OFFICER WILLIS: Thank you, so
25 moved.

1 MR. FRESCH: Thank you.

2 HEARING OFFICER WILLIS: Visual
3 resources.

4 MR. FRESCH: With respect to the topic
5 area of visual resources applicant proposes to
6 submit by declaration, portions of exhibit number
7 38 and exhibits 1, 2, 3 and 4 into the record.

8 HEARING OFFICER WILLIS: Staff, any
9 objections?

10 MR. WESTERFIELD: No objections.

11 HEARING OFFICER WILLIS: So moved.
12 Staff?

13 MR. WESTERFIELD: Staff's evidence is
14 also by declaration on this topic. We'd like to
15 move into the record appropriate sections of
16 exhibits 34 through 36.

17 MR. FRESCH: No objections.

18 HEARING OFFICER WILLIS: Thank you, so
19 moved.

20 The next topic is land use.

21 MR. FRESCH: Applicant proposes to
22 submit the technical area of land use by
23 declaration. Applicant respectfully requests that
24 portions of exhibit number 38 and exhibits 1 and 2
25 be moved into the record.

1 MR. WESTERFIELD: No objection.

2 HEARING OFFICER WILLIS: Thank you, so
3 moved. Staff?

4 MR. WESTERFIELD: Staff also presents
5 its evidence by declaration. We'd like to move
6 into the record appropriate sections of exhibits
7 34 through 36.

8 HEARING OFFICER WILLIS: Any objection?

9 MR. FRESCH: No objections.

10 HEARING OFFICER WILLIS: Okay, so moved.
11 Next topic is biological resources.

12 MR. FRESCH: Applicant proposes to
13 submit the technical area of biological resources
14 by declaration. Applicant would respectfully
15 request to move portions of exhibit number 38 and
16 exhibit 1 into the record.

17 MR. WESTERFIELD: No objection.

18 HEARING OFFICER WILLIS: Thank you, so
19 moved. Staff?

20 MR. WESTERFIELD: Staff's evidence is
21 also by declaration on this topic. We'd like to
22 move in appropriate sections of exhibits 34
23 through 36.

24 MR. FRESCH: No objections.

25 HEARING OFFICER WILLIS: Thank you, so

1 moved.

2 Soil and water resources. Applicant?

3 MR. FRESCH: Applicant proposes to
4 submit technical area of soil and water resources
5 by declaration. Applicant respectfully requests
6 to move into the record portions of exhibit number
7 38, exhibit 1, 2, 3, 4, 19, 19A and 19B into the
8 record.

9 MR. WESTERFIELD: No objection.

10 HEARING OFFICER WILLIS: Thank you, so
11 moved. Staff, before we move your exhibits, we
12 had a couple questions on the proposed conditions
13 of certification.

14 The first is soil and water-1. The
15 Committee just asked for clarification if this
16 condition referred to construction and operation?

17 MR. WESTERFIELD: Just a moment, please.

18 HEARING OFFICER WILLIS: Thank you.

19 (Pause.)

20 MR. WESTERFIELD: Staff would like to
21 have Mr. Pfanner answer the question.

22 HEARING OFFICER WILLIS: Thank you.

23 MR. PFANNER: Well, it sounds like it's
24 referring to both --

25 HEARING OFFICER WILLIS: That was just a

1 clarification we were asking for.

2 And on soil and water-5, it says the
3 project owner shall not use potable water for
4 process cooling water for more than nine days
5 annually. There isn't, under the verification, or
6 there isn't a description of what would happen if
7 they do use water over those nine days. Do you
8 know what the consequence for --

9 MR. PFANNER: I don't --

10 HEARING OFFICER WILLIS: Okay, we would
11 propose just to leave the record open on soil and
12 water just for the limited purposes of addressing
13 that issue. And we would request that you would
14 do that in the form of a brief, or you know, some
15 kind of written documentation.

16 MR. WESTERFIELD: We would be happy to.

17 HEARING OFFICER WILLIS: Okay, thank
18 you. Would you like to move your --

19 MR. WESTERFIELD: We would like to
20 submit the rest of our evidence by declaration.
21 And move in appropriate sections of exhibits 34
22 through 36.

23 MR. FRESCH: No objection.

24 HEARING OFFICER WILLIS: Thank you, so
25 moved. Worker safety and fire protection.

1 MR. FRESCH: Applicant proposes to
2 submit technical area of worker safety and fire
3 protection into the record. At this time
4 applicant would respectfully request to move into
5 the record portions of exhibit number 38 and
6 exhibit 1.

7 HEARING OFFICER WILLIS: Any objection?

8 MR. WESTERFIELD: No objection.

9 HEARING OFFICER WILLIS: So moved.
10 Staff?

11 MR. WESTERFIELD: In this topic area
12 staff's sole evidence is by declaration. We'd
13 like to move into the record the appropriate
14 sections of exhibits 34 through 36.

15 HEARING OFFICER WILLIS: Thank you.

16 MR. FRESCH: No objection.

17 HEARING OFFICER WILLIS: Thank you, so
18 moved.

19 Noise? Applicant.

20 MR. FRESCH: Applicant at this time
21 proposes to move into the record the technical
22 area of noise by declaration. Portions of exhibit
23 number 38 and exhibit 1 be moved into the record.

24 MR. WESTERFIELD: No objection.

25 HEARING OFFICER WILLIS: So moved.

1 Staff?

2 MR. WESTERFIELD: Staff's evidence in
3 this area is also by declaration. And we'd like
4 to move into the record the appropriate sections
5 of exhibits 34 through 36.

6 HEARING OFFICER WILLIS: Any objection?
7 Mr. Fresch, any objection?

8 MR. FRESCH: No objection.

9 HEARING OFFICER WILLIS: Thank you. So
10 moved. Noise. The topic of noise.

11 MR. FRESCH: You mean compliance and
12 closure? Didn't we do noise?

13 MR. WESTERFIELD: Yeah, --

14 HEARING OFFICER WILLIS: I thought we
15 said worker safety and fire protection.

16 MR. WESTERFIELD: We just did noise.

17 HEARING OFFICER WILLIS: Did you move in
18 noise? Because I had a question on noise.

19 MR. WESTERFIELD: We did, but we're
20 happy to answer your question.

21 HEARING OFFICER WILLIS: Okay, I may
22 have said noise, I meant worker safety and fire
23 protection. Okay.

24 I want to go back to noise just for one
25 moment. We had a question on noise condition-1

1 and 5. Those are both notification conditions.
2 And they address notifying residents but not any
3 other entities, such as businesses or commercial
4 or government entities.

5 We would ask that there be some
6 inclusion of those entities into those two
7 conditions. Is there any --

8 MR. WESTERFIELD: Staff has no
9 objection. How about applicant?

10 MR. FRESCH: No objection.

11 HEARING OFFICER WILLIS: Okay, thank
12 you.

13 (Pause.)

14 HEARING OFFICER WILLIS: Okay,
15 compliance and closure.

16 MR. FRESCH: At this time applicant
17 proposes to submit the technical area of
18 compliance and closure into the record by
19 declaration. We respectfully request to move
20 portions of exhibit number 38 and exhibits 1 and
21 15 into the record.

22 HEARING OFFICER WILLIS: I'm sorry, the
23 last number was 15?

24 MR. FRESCH: It's 15.

25 HEARING OFFICER WILLIS: Thank you. Any

1 objection?

2 MR. WESTERFIELD: No objections.

3 (Laughter.)

4 HEARING OFFICER WILLIS: So moved.

5 Staff.

6 MR. WESTERFIELD: Staff's evidence is
7 also by declaration, and we would like to move
8 into the record appropriate sections of exhibits
9 34 through 36.

10 MR. FRESCH: No objection.

11 HEARING OFFICER WILLIS: Thank you, so
12 moved.

13 MR. FRESCH: Applicant also had another
14 exhibit they wanted to put into the record. Would
15 it be an appropriate time now to request that?

16 HEARING OFFICER WILLIS: Sure, what
17 exhibit would that be?

18 MR. FRESCH: We recently docket filed
19 last week our EPC contract for construction of the
20 power plant. We would propose to make that
21 exhibit number 40.

22 HEARING OFFICER WILLIS: Do you have
23 copies of that contract?

24 MR. FRESCH: Yes, we do.

25 HEARING OFFICER WILLIS: Has staff seen

1 that exhibit?

2 MR. WESTERFIELD: Yes.

3 (Off-the-record discussions.)

4 MR. FRESCH: At this time applicant will
5 have its project manager, Ramon Abueg, address the
6 issue regarding the skilled labor.

7 HEARING OFFICER WILLIS: Thank you.

8 MR. ABUEG: Is there a question? I'm
9 not sure what I need to say.

10 HEARING OFFICER WILLIS: The question, I
11 guess the question regarding this contract, under
12 the six-month rules there needs to be a labor
13 contract. And so we're questioning whether this
14 document that we've just seen, does that include
15 the labor contract to meet the requirements for
16 the six-month procedure.

17 MR. ABUEG: Yeah, according to the
18 contract we are requiring our contractor in this
19 case, University of Marelich Mechanical, to enter
20 into a project labor agreement with the labor
21 trades in the area.

22 As a matter of fact, we do have a letter
23 coming from the labor relations consultants that
24 confirms that the negotiations are in progress,
25 and that they're about to enter -- or sign the

1 agreement pending some clarifications from, I
2 believe, just the electrical group.

3 It's not in this letter but they are
4 very close in signing the project labor agreement.

5 The draft of the project labor agreement
6 has been submitted to the Trades Council; just
7 waiting for approval.

8 COMMISSIONER PERNELL: Is that the
9 Building Trades or the Central Labor Council?

10 MR. ABUEG: Central Labor Council.

11 COMMISSIONER PERNELL: They don't build.
12 Building Trades builds. So I'm assuming it's the
13 Building Trades.

14 MR. ABUEG: Yeah, the Building Trades
15 turn it over to them.

16 COMMISSIONER PERNELL: Okay.

17 MR. ABUEG: We will submit the PLA as
18 soon as its done.

19 UNIDENTIFIED SPEAKER: Which is when?

20 MR. ABUEG: We expect the PLA to be
21 completed in two weeks.

22 COMMISSIONER PERNELL: Can we go off the
23 record?

24 HEARING OFFICER WILLIS: Okay.

25 (Off the record.)

1 HEARING OFFICER WILLIS: We're back on
2 the record.

3 MR. FRESCH: Applicant would propose to
4 make as exhibit number 41 a correspondence
5 referring to the necessity of the project labor
6 agreement be executed within a two-week time
7 period, satisfying the skilled labor component,
8 the Public Resources Code.

9 HEARING OFFICER WILLIS: Okay, I'm
10 sorry, the exhibit 40 was the contract for
11 procurement --

12 MR. FRESCH: And exhibit 41 would be
13 correspondence from the lawyer --

14 MR. ABUEG: From our contractor's lawyer
15 to the State Building --

16 MR. FRESCH: State Building Trades
17 lawyer verifying that a project labor agreement
18 will be executed in a short period of time.

19 HEARING OFFICER WILLIS: Is there any
20 objection from staff?

21 MR. WESTERFIELD: We have no objection.

22 HEARING OFFICER WILLIS: We'll go ahead
23 and move that.

24 And we'll also leave the record open in
25 socioeconomics for the purpose of receiving the

1 project labor agreement in approximately two
2 weeks, if you can provide us that.

3 MR. FRESCH: Yes.

4 HEARING OFFICER WILLIS: And then the
5 record will be closed once we receive that.

6 Also, for the record, we'll also be
7 leaving the record open in air quality. What
8 we're requesting staff to do would be to take the
9 air quality section and probably make -- turn it
10 into one complete section for us so that we don't
11 have to go through the different addendums.

12 Including in that would be the revised
13 table, was it 25 and 26, I believe. And any
14 change in text that would be reflected from the
15 District's comments today regarding the offsets.

16 MR. FRESCH: It was a table, the
17 District table --

18 MR. WESTERFIELD: They will --

19 HEARING OFFICER WILLIS: And the
20 District will be giving us the offset table, as
21 well.

22 And furthermore, the District will also
23 be clarifying on the continuous emission
24 monitoring status.

25 And then furthermore, we'll leave the

1 record open for soil and water resources, just to
2 clarify those two conditions. And that was
3 conditions 1 and 5, I believe.

4 As far as scheduling for briefing, I
5 talked with the applicant who is prepared to file
6 a brief on February 18th.

7 MR. FRESCH: That is correct.

8 HEARING OFFICER WILLIS: And staff is
9 more than welcome to file a brief if they so
10 choose.

11 Reply briefs would be due by February
12 24th.

13 MR. WESTERFIELD: Would that be if we so
14 choose, the reply briefs? Or is that mandatory?

15 HEARING OFFICER WILLIS: No, it's
16 optional.

17 The parties understand that although
18 this case remains a six-month case schedule delays
19 result in extending the case for several months
20 beyond the six-month deadline.

21 The Committee will try to expedite the
22 process as much as possible, but the parties
23 should not expect a PMPD, Presiding Member's
24 Proposed Decision, for at least 45 to 60 days.

25 And I just wanted to make sure from all

1 parties that all the exhibits have been offered
2 into evidence.

3 MR. FRESCH: Yes.

4 HEARING OFFICER WILLIS: If there's
5 anything else, any questions from any party?

6 MR. FRESCH: There are no questions from
7 applicant.

8 MR. WESTERFIELD: No questions.

9 HEARING OFFICER WILLIS: Just to clarify
10 for the applicant that there is a 30-day comment
11 period after the Presiding Member's Proposed
12 Decision comes out for public comments.

13 And then after the 30 days is when it
14 would go before the full Commission.

15 Any other questions, comments?

16 Okay, the record is closed for the
17 topics, except for air quality, soil and water,
18 and socioeconomics for the limited purposes that
19 we've discussed.

20 And the hearing is adjourned. Thank you
21 very much.

22 (Whereupon, at 4:26 p.m., the hearing
23 was adjourned.)

24 --o0o--

CERTIFICATE OF REPORTER

I, JAMES RAMOS, an Electronic Reporter,
do hereby certify that I am a disinterested person
herein; that I recorded the foregoing California
Energy Commission Hearing; that it was thereafter
transcribed into typewriting.

I further certify that I am not of
counsel or attorney for any of the parties to said
hearing, nor in any way interested in outcome of
said hearing.

IN WITNESS WHEREOF, I have hereunto set
my hand this 17th day of February, 2003.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345